Digest of Cases

REPORTED IN THE

TRAVANCORE LAW REPORTS,

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VOLS. I—XII.

COMPILED BY

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PREFACE.

My object in bringing out this work is to furnish a comprehensive index to the Case Law of Travancore as reported in Volumes I to XII of the Travancore Law Reports. As this is the first attempt made to present the rulings of the Travancore High Court in a compact form so as to render it easy for the practitioner to find out the authorities he requires without first referring to the reports themselves, my brethren of the Bar will place me under a deep obligation if they will be good enough to offer their suggestions for the improvement of the work. I have in the preparation of this Digest followed, as far as possible, the excellent method and arrangement adopted by Mr. Woodman in his well-known Digest, and I shall consider myself amply rewarded if the work answers even in a small degree the wants of the Bench and the Bar in Travancore.

My hearty thanks are due to Mr. K. G. Sesha Aiyar, B. A. & B. L., Professor of Law, and Vakil, High Court, for the valuable assistance rendered to me in the preparation and revision of this work.

TRIVANDRAM,
Nov. 14th, 1898.

S. AIYADURAI AIYAR.

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A DIGEST

OF

THE TRAVANCORE LAW REPORTS

VOLS. I TO XII.

ABETTOR OF PERJURY—Liability to Damages of—*See cases under* "DAMAGES."

Venkitaram Iyengar vs. *Regunatha Rao.* 4 T. L. R., 26.

ABKARY REGULATION—

1—SECS. 22 & 28—*wrongful seizures of articles in search under Section 22—Suit for Damages—Limitation.*

Under Sec. 22 of the Abkary Regulation (I of 1054), a Police Inspector may, on complaint or on information that unauthorised distillation and sale of arrack are being carried on in a house in which the sale or manufacture of liquor is licensed under the Regulation, enter into and search such house, even without a warrant from a Magistrate.

The Section, however, does not expressly authorise the seizure of any articles.

A party prejudiced by such seizure in excess of authority, has a clear right to proceed against the Sirkār or the Public servant for damages.

Such suit for Damages is governed not by the Limitation Regulation but by Sec. 28 of the Abkary Regulation which restricts the right of suit to 6 months from date of accrual of the cause of action. *Kochukoonju* vs. *Sirkar.* 12 T. L. R., 95.

2—*Revenue attachment and sale—*

Sec. 28 of the Abkary Regulation—Cause of action —Recognised agents.

Held that the Law (Sec. 28 of the Abkary Reg.) prohibits the entertainment of Suits to cancel the attachment and sale of property, made by Revenue Authorities after the expiration of 6

months from the accrual of the cause of action, the same not accruing until the highest authority (Dewan) confirms the sale and proceedings impeached.

Held also that the execution of a written agreement with the usual solemnities and in the mode prescribed by the Regulation, is a condition precedent to the right of enforcing the claims against sub-renters by a summary process under the Abkary Regulation, and that there is nothing in the Royal Proclamation of 8th Chingam 1058 to show that these safeguards were intended to be dispensed with in any case.

Held further that the recognised agents of parties residing out of the jurisdiction of the Court, are entitled to make applications on behalf of their principals without themselves being made formal parties, to the case, [illegible] law.

Held also that it is an elementary principle of law that the property attached or distressed, should be proportionate to the amount of the demand. *Tharasimuthu Nadar* vs. *Kochu.*

6 T. L. R., 90.

ABSENCE OF COMPLAINANT—Discharge.

See Cr. P. C., Sec. 230. 1 T. L. R., App. 6.

ABUSIVE LANGUAGE—*Use of—Procedure in cases of—*

When a complaint is made, the Magistrate should ascertain from the complainant what are the abusive words used, the relation of parties to each other, their position in Society, and other circumstances so as to show a *prima facie* inference as to there having been any likelihood of a breach of the peace in consequence of the abusive expressions. If it be found from this examination that such an inference may be drawn process should be issued, calling upon the accused to answer a charge under Sec. 504 I. P. C., otherwise the complaint should be dismissed. Criminal Circular No. 15 of 1060. 4 T. L. R., App. 5.

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5 T. L. R., App. 1.

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Held that a document which simply recites the fact of receipt of a certain amount is not a bill in the proper sense of the word.

Held further that an acknowledgment of a debt after it had become barred is sufficient under the present law of Limitation to revive it.

Held also that the mere assertion that a sum of money will be payable on the happening of an event future and uncertain is not an acknowledgment of a debt sufficient to remove the statutory bar. *Aiypu vs. Varki.* 4, T. L. R., 73.

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ADJOURNMENT.—

(*In Criminal Cases*)—*notice.*

1.—Held that where a summons case is instituted by a public servant, acting as such, and no appearance is made on behalf of the Prosecutor, the presiding Magistrate should use his discretion as to whether such a case is to be dismissed or adjourned, and notice of the day and hour of hearing should be given to the officer who directs the prosecution. 7 T. L. R., App. 24.

2.—*Notice to witnesses*—When trials are adjourned fresh notice will be given to the witnesses which will be done by serving it on them at once in Court. 1 T. L. R., 49.

ADMISSION— 18-

See cases under Malabar law—Liability of Tarwad property.
3 T. L. R., 45.

1.—*Cause of action—Execution of barred decree.*

A takes a Melkanom deed from B, the Jenmee, and sues to redeem the property, thereunder conveyed, from C and D on pay-

ment to them of the amount due under a prior Kanom deed executed to them. C and D admit A's claim, but E (who holds the property under a prior mortgage given him by C and D) denies the genuineness of the Kanom and pleads that A is not entitled to any relief in that B, his (A's) Jenmee, failed to execute a prior decree he had obtained against C and D for redemption of the same.

Held that the admission of C and D does not bind E who claims under a prior title and that the decree bars the right of A and B to rely on the original cause of action which is merged in that decree and that they cannot redeem the property independently of the alleged Kanom, the execution of the decree being barred.

Held also that neither a Court of Law nor a Court of Equity will allow a party to execute by a fresh suit a decree whose execution has become barred. *Kesavan* vs. *Uppappa*. 5 T. L. R., 30.

ADMISSIONS CONTRARY TO THE PLEADINGS—*recording of—contract—admissibility of oral evidence*—Admissions of parties and waiver of contentions by them at any stage of the suits, at variance with the written pleadings should be recorded in the form of a statement or noted in the Judge's own hand.

Held also that when the terms of a contract, reduced to writing are not clear, such as a mortgagee providing 'that the property mortgaged shall be redelivered whenever the mortgagor pays off the debt,' an oral agreement may be permitted to be proved to explain the terms of the contract, provided that the same is not inconsistent with the actual terms of the contract. *Ouseph* vs. *Thoma*. 5 T. L. R., 124.

ADOPTION.

See cases under Malabar Law. 1 T. L. R., 24.
6 T. L. R., 108.
7 T. L. R., 66.

See also cases under Malabar Brahmins. 10 T. L. R., 151.
9 T. L. R., 160.

——*neet of—how to be impeached.* A neet of adoption granted by the Palace is a public document and should ordinarily be accepted as proof of its contents unless and until the party impeaching its validity shows that it was obtained by misrepresentation, fraud or the like. *Nankali* vs. *Kunjane and Sirkar*.
8 T. L. R., 99.

ADUKUVATHU—

See cases under Jenmi and Kudyan,—Alienations by Jenmi.
8 T. L. R., 27.

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ADULTERY—*form of complaint—indifference of husband—*
See cases under I. P. C., Sec 497. 9 T. L. R., 124.

ADVERSE POSSESSION.

See cases under " Limitation Act," art 121
See cases under " Declaratory Decree—suit for—
10 T. L. R., 70.
See " Estoppel," 10 T. L. R., 96.
See " Mahomedan Law," 10 T. L. R., 20.

AGENTS—*Recognised.*

See " Abkary Regulation." 6 T. L. R., 90.
See " Bond and Promissory Note." 8 T. L. R., 30.
See " Principal and Agent." 8 T. L. R., 80.

AGREEMENTS FOR VAKIL'S FEES—*Effect of absence of—Vakil's Regulation.*

See Vakil's fee. 1 T. L. R., 102.

——FOR OATH. *See cases under " oath."* 1 T. L. R., 112.
2 T. L. R., 20.

——*Giving time to Judgment debtor—when void.*
See Civil Procedure Code. Sec. 254. 11 T. L. R., 141.

——*Relating to immoveable property — Unregistered deed—Specific relief—Enforcement of the agreement as a verbal agreement—Secs.* 9 *and* 31 *of the Registration Regulation.*

In a suit for recovery of land, the parties agreed to abide by oath, but instead of carrying out the oath agreement, they came to compromise in the presence of the Commissioner deputed to see the oath taken. The terms of the agreement of the compromise were noted down by the Commissioner, and the parties signed the paper. This agreement was produced in Court but no decree was passed on it, the suit having been dismissed. The plaintiff in that suit now sues to enforce the terms of the agreement of compromise.

Held that the agreement relating as it does to immoveable property, is compulsorily registrable under Section 9 of the Registration Regulation, and being unregistered is inadmissible in evidence under Sec. 31 of the same regulation.

Held also that the suit being on a written agreement cannot be treated as one based on a verbal agreement. The suit was consequently held unsustainable. *Sankaran* vs. *Velandan.*
11 T. L. R., 200.

AGRICULTURAL YEAR—*Commencement of usage—Held* that the agricultural year under the usage of the country commences with Chitray (Mesham) and redemption should be made before that time of each year. The fact that the deed where under redemption is sued for, was not executed in the month of Chitray, cannot, where the contract is silent on the point, alter the date of redemption fixed by usage. *Korathu* vs. *Cheria*. 12 T. L. R., 111.

ALIENATION.

——*See cases under "Malabar Law—Alienation."*

——*See also cases under "Hindu Law—Alienation."*

1.—*Of Anubhogam lands.*

An alienation of lands of the description known as Anubhogam is not invalid as against the alienor. *Narayanan* vs. *Narayanaroo.* 5 T. L. R., 15.

2.—*By superior of Religious Institution—Right of Junior representatives to question.*

A, the Junior Swamiar of a Mattam, sues to remove B, the Senior Swamiar from the management thereof, and to set aside alienations of immoveable property made by the latter in favour of C. B and C plead that A has no right to sue.

Held that the Mattam being a Brahminical and religious institution, questions raised in connection with its concerns must be decided with reference either to the general principles of Hindu Law, or to any special usage or custom by which its affairs have been hitherto administered.

Held further, that B can at best be only a trustee; that, as such, he has no beneficial interest in the property committed to his management; that he cannot therefore encumber or dispose of it; and that, hence, A is competent to question the alienation made by B and to seek his removal from management. *Pushpanjally Swamiar* vs. *Kiranthitta Swamiar.* 4 T. L. R., 61.

ALIENS.

See Jurisdiction. 3 T. L. R., 35.

ANDU.—*Meaning of.*

Held that the word Andu means no more than *a year* and does not mean the official year which begins with Chingam and ends with Karkatakam. *Varki* vs. *Kypari.* 7 T. L. R., 29.

ANUBHOGAM LANDS.—An Alienation of land of the description known as "Anubhogam" is not invalid as against the alienor. *Narayanan* vs. *Narayanaroo.* 5 T. L. R., 15.

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APPEAL.

I.	COSTS.	VII.	JURISDICTION.
II.	DECREES.	VIII.	LIMITATION.
III.	DEFAULT IN APPEARANCE.	IX.	OBJECTIONS BY RESPONDENTS.
IV.	DEFECT OF PARTIES.	X.	ORDERS.
V.	EXECUTION OF DECREES.	XI.	REVIEW.
VI.	EX-PARTE CASES.	XII.	RIGHT OF APPEAL.

I. COSTS—*hearing on the merits.*

Plaintiff sued in ejectment and obtained a decree but without costs in the Court of 1st instance. He appealed to the Lower Appellate Court on the question of costs only and was again successful.

Held that in a Special Appeal from the last decree it was not competent to defendant to re-open the case upon the merits. *Subramaniyam* vs. *Padmanaba Mudelliar.* 2 T. L. R., 8.

II. DECREES—*Assignment of.*

No appeal lies to the Zillah Court against an order of the Munsiff refusing to recognise an assignment of a decree. *Krishnan* vs. *Narasinga Pye.* 3 T. L. R., 36.

III. DEFAULT IN APPEARANCE.

——*Exparte decision.*

The default of a defendant to appear on the day to which the hearing of a case is adjourned, falls under Section 100 of the old C. P. C. in the same way as a default to appear on the day named in the original summons. No appeal under Section 108 of the old C. P. C. therefore lies by a defendant who was treated as *ex-parte*, by a Court under such circumstances. *Kesava Menon* vs. *Vasu Nambiar.* 3 T. L. R., 22.

IV. DEFECT OF PARTIES IN—See Case under C. P. C., Sec. 31.

V. EXECUTION OF DECREES.—

—*Refusal to execute decree against sureties.*

Held that an appeal lies against the order of the Zillah Judge refusing to execute a decree against sureties, who in consideration of the stay of execution of a decree pending the disposal of the appeal preferred against it, have made themselves responsible for the amount of the Judgment debt. *Kathija Ooma* vs. *Vappu Kutty.* 5 T. L. R., App. 7.

VI. EX-PARTE CASES.

1.—*Ex-parte decision :* No appeal lies to the Zillah Court against the Munsiff's order setting aside an *ex-parte* decision. *Korathu* vs. *Kochu Kunjoo.* 3 T. L. R., App. 42.

2.—*Ex-parte decision—Small Cause.*—There is no appeal against a Munsiff's Judgment dismissing a Small Cause Suit. When the defendant is *ex-parte* in such cases, it is, therefore, safe to give a Judgment for the plaintiff. 3 T. L. R., App. 44.

VII. JURISDICTION.

——*Appeal Against Zillah decision in suit of Small Cause.*

The suit is one instituted by the Sirkar. In appeal the objection was raised that no appeal lay against the Zillah decree as the amount sued for was below 20 Rs.

Held that an appeal lay as Zillah Courts have no final Jurisdiction in original suits under the law in force. *Sirkar* vs. *Kumaraswamy.* 7 T. L. R., 141.

VIII. LIMITATION.

1.—In excluding the time required for obtaining the copy of the decree the day of application for, and the day of furnishing copy of, decree should both be excluded. 1 T. L. R., App. 7.

2.—*Delay in granting copy—*

Held that the law making it obligatory on appellants to produce a copy of the Lower Court's Judgment along with the appeal memo. unless it is dispensed with by the Appeal Court the delay, even though it may be of more than 3 years in granting the copy, is not delay for which the appellant is responsible. *Dewan of Travancore* vs. *Kesavan Potti.* 12 T. L. R., 198.

IX. OBJECTIONS BY RESPONDENT.

See cases under Sec. 532. *C. P. C.*

X. ORDERS.

1.—*rejecting a time-barred appeal.*

Held that an order rejecting a time-barred appeal is not a decree and that no appeal lies from such an order.

3 T. L. R , App. 37.

2.—*Under Secs.* 71 *and* 73 *c. p. c.* (*old*) : *Sec.* 365 (*new*).

Held that no appeal lies against the order refusing to take security for costs from the plaintiff. *Krishna Menon* vs. *Variathu.*

5 T. L. R., App. 9.

3.—*Interlocutory order.*

Held that an order restoring a suit to file, with or without conditions, is an interlocutory order and it can be questioned only in an appeal preferred against the final decision of the suit ; and that the fact of an order being wholly or partially illegal, does not confer jurisdiction upon a Court to hear appeals against orders not specially appealable. *Jaganatha Rao* vs. *Ananta Shanai.*
7 T. L. R., App. 53.

4.—*Granting or refusing permission to sue in forma pauperis.*

Held that an order granting or refusing permission to sue *in forma pauperis* is final and not open to appeal. *Vadakan* vs. *Shankaranarayana Aiyar.* 7 T. L. R., App. 54.

5.—*Appeal against orders in execution of decree—*

"*See cases under Civil Procedure Code, Sec.* 238."

6.—*Ex-parte order.*

No appeal lies from an order of the Appellate Court declining to re-hear an appeal decided *ex-parte* *Kali* vs. *Neelacandan.*
7 T. L. R., App. 56.

7.—*From orders on application for re-trial. See Civil Procedure Code, Sec.* 103. 8 T. L. R., App. 40.

8.—*Order dismissing application by representative of deceased to be joined as party—whether appealable—appeal by representative of deceased party.*

Held that no appeal lies against an order dismissing an application by a representative to be allowed to appeal in the place of such deceased party.

Held also that the representative of a party dying after decree and before the expiry of the period allowed for appeal, may present an appeal without previously obtaining permission therefor; and such appeal, when presented, should be registered and proceeded with, the appellant's competency to represent the deceased party being open to be objected to by respondents and to be disposed of by the Court at the hearing of the appeal. If the objection be allowed the appeal is dismissed. It is only against the dismissal of the appeal that the representative has a right of second appeal. 9 T. L.R., App. 44.

9.—*Order rejecting application to set aside ex-parte order against defendant :—*

Held that an order rejecting an application for setting aside

an *ex-parte* order against a defendant is appealable under clause 9. Sec. 557, C. P. C.

Held also that such an order would, in the absence of an appeal against it, debar the defendant from impugning it in second appeal.

Held further that an appeal by defendant against an *ex-parte* decree can succeed only by showing that the claim is unsustainable legally or on the evidence adduced. *Ramasawmy Aiyan* vs. *Raman.* 11 T. L. R., 143.

10.—*Order granting review.*

Held that the order granting a review shall not by itself be open to appeal; but the appellate Court is fully competent to consider the propriety or otherwise of the order granting the review in an appeal preferred against the judgment passed upon review. *Mala Iye* vs. *Varki Anthrapper.* 3 T. L. R., 20.

XII.—RIGHT OF APPEAL.

——*Dismissal of petition for default.*

Until the order of dismissal based on default is cancelled the appellant has no right to appeal. *Kali* vs. *Sreenivasa Row.*
5 T. L. R., App. 6.

APPEAL STATEMENTS.

——Ordered that First Class Magistrates do send their appeal statements to the Sessions Judges, who will send another statement embodying the same, to the High Court besides their monthly appeal statement. *Criminal Circular No.* 18 *of* 1057.
1 T. L. R., 39.

APPELLATE COURT.

——*amendment of plaint in appeal. Power of Appellate Court to bring in new parties.*

See cases under "Malabar Law—Junior Members' Right to sue."
See also cases under "Remand".

1.—*Power to remand—sufficient evidence.*

Where a case has been fully investigated, but the Court of first instance has failed to record its opinion thereon, the Appellate Court ought to proceed to determine the case upon the evidence, if, in its opinion, there is sufficient material on the record for that purpose, and has no power to remand the case. *Bagavathi Thampi* vs. *Kalliani Amma* 1 T. L. R., 108.

2.—*Portion of decree not appealed against.*

Held that Appellate Court is incompetent to interfere with any portion of the original decree not appealed against. *Chambakakuti* vs. *Kumaran.* 3 T. L. R., 33.

3.—*Power of—costs.*

Held that an Appellate Court is fully competent to make any order as to costs it may think fit, notwithstanding that no regular appeal or objection had been filed against the lower Court's order as to costs. *Kochoo Mathu* vs. *Oolahannan.* 6 T. L. R., 13.

4.—*Lower Court's duty to give effect to Appellate Court's order.*

Held that every Subordinate Court whose order is cancelled by the order of the Appellate Court, is bound to give effect to that appellate order, whatever its own view of the case may be,

10 T. L. R., App. 7.

5.—*Joinder of additional party by—order of remand. Sec.* 551 *C. P. C.*

Where a Court of first appeal remanded a case to the original Court for the addition of a party and fresh trial.

Held, on appeal from the order of remand.

That, by force of S. 551 of the C. P. C. an Appellate Court has the power of adding any party it may think necessary; and that the proper course in the case for the lower appellate court was to have added the party itself, and then to have framed the necessary issues and remitted the case to the original court for findings on those issues. *Meeravunni* vs. *the Archbishop of Verapoly.*

11 T. L. R., 180.

APPROPRIATION OF PAYMENTS.

1.—*Indian Contract Act, S. 61.—barred debts.*

Held that a creditor is at liberty to appropriate payments in satisfaction of older and barred debts in the order of their dates. *Krishna Aiyan* vs. *Sankaran.* 1 T. L. R., 77.

2.—*Creditor's right to apply payments towards interest and barred items.*

Held that a creditor is entitled to apply payments first in satisfaction of interest, and secondly to the principal, unless the debtor has made any special application.

Held also that a creditor may apply unappropriated payments in liquidation of barred items. *Meethian Nina* vs. *Easwaran.*

10 T. L. R., 83.

3.—*Barred items.*

Held that a creditor has the right to apply unappropriated payments towards barred items. 10 T. L. R., App. 3.

4.—*Creditor's right of appropriation.*

Held that a creditor has the right of appropriating payments first in liquidation of the interest due. *Chellappa Pillai* vs. *Itty.*
11 T. L. R., 109.

ARREST.

——*See cases under Civil Procedure Code. S. 331,*
7 T. L. R., App. 49.

——*See also cases under "Penal Code S. 225 B."*
11 T. L. R., App. 15.

ASSIGNEE.

See cases under "Decree—Assignment of decree".

9 T. L. R., 75.
9 T. L. R., 81.
9 T. L. R., 187.
9 T. L. R., App. 21.
9 T. L. R., 209.
12 T. L. R., 132.

Assignment of decree.
——*Appeal.*

Held that no appeal lies to the Zillah Court against an order of the Munsiff refusing to recognise an assignment of a decree. No assignment of a decree is valid unless notice of the same was given to the Judgment-debtor who is entitled to have his objections thereto heard. The mere recording of a petition of assignment of decree does not entitle the assignee to sue out execution. *Krishnan* vs. *Narasinga Iyer.* 3 T. L. R., App. 36.

ASSIGNMENT OF MORTGAGE RIGHT.

——*Evidence of bad faith*—

It is strong evidence of bad faith for an assignee of a mortgage right to take such assignment without proper enquiry into the validity of the original charge or any investigation of the title of those actually in possession. *Mathali* vs. *Abdurraheman.*
2 T. L. R., 6.

ASSIGNMENT OF SECURITY BOND,—*By Chitty foreman.*
See cases under "Chitty,"

ATTACHED MOVEABLE PROPERTY—*Custody of—maintenance of live-stock—Rules relating to.*

See Civil Circular No. 8 of 1061. 4 T. L. R., App. 21.

ATTACHED PROPERTY—

——*Building under attachment—sale and removal of—offence.*
See Penal Code S. 206. 11 T. L. R., App. 7.

ATTACHMENT.—

1. Subjects of attachment and mode of attachment.
2. Attachment before Judgment.
3. Alienation during attachment.
4. Attaching Creditor's rights under attachment.
5. Effect of attachment.—

1. SUBJECTS OF ATTACHMENT.—

1.—*Of compensation awarded in Criminal Case, for satisfaction of civil decree.*

Compensation awarded in a Criminal Case is liable to attachment in execution of a decree of a Civil Court. After attachment, the Civil Court has simply to ask the Magistrate in whose custody the amount is, to remit the same to it for payment to attaching creditor. The sale of such property is open to objection. *Criminal Circular No. 2 of* 1062. 6 T. L. R., App. 9.

2.—*Decrees.*

Held that a decree of Court is no doubt property that can be attached under S. 263 of the C. P. C., and that it (the decree) falls under the description of "other property" in that Section; that the mode of attachment depends upon the nature of the decree sought to be attached; that if it is a simple decree for money the attachment should be made under S. 270 (old sections 221 and 223); that the provisions therein contained should be strictly complied with to make the attachment complete and legally valid; and that if it is a decree for either immoveable property or for money charged on specific immoveable property the attachment should be made according to the provisions of Section 271.

Held also that a regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money, and where there has been no such attachment, any sale that may have taken place is not simply voidable but *de-facto* void. *Ramanatha Rao* vs. *Asem.* 6 T. L. R., 81.

3 —*Mode of attachment of debt bonds.*

SEE CASES UNDER C. P. C. S. S. 265 & 267.

6 T. L. R., 1.

4.—*Procedure in cases of attachment of moveables in the custody of public officers.*

Held that it is the duty of the court, on an application to attach moveables in the hands of any public officer, in the execution of a decree, to satisfy itself that the moveables so sought to be attached, belonged to, or were delivered to the decree-debtor; that the duty of the officer to whom a prohibitory notice under S. 221 is issued, is to hold the moveables in his official custody, subject to the further order of that court; that it is not the business of the latter officer to enquire whether the moveables belonged to the debtors or not; that it is not competent to him to disregard the notice because, in his opinion, the order was not rightly issued or that the court did not make proper enquiries about the ownership of the moveables before the issue of the notice; that Section 221 requires public officers who get prohibitory notices, without regard to any right asserted or proved to the articles in their custody by any person, to hold them subject to the further order of the court, and should he, however, entertain any doubt about the propriety of the order or of the title of the judgment-creditor to have the articles attached, he should simply refer the party aggrieved or affected by the notice, to the court which issued the same, keeping the articles in his custody pending the further instructions of that court.

Lakshmi vs. *Nagamiah.* 10 T. L. R., 178.

5.—*Held* that it is an elementary principle of law that the property attached or distressed should be proportionate to the amount of demand. *Thavasimuthu Nadar* vs. *Kochu.*

6 T. L. R., 90.

2. ATTACHMENT BEFORE JUDGMENT.

1.—*Sale.*

The effect of Secs. 79 and 254 of Regulation II of 1037 (Civil Procedure Code old) is to give priority to the party who as a *decree-holder*, attaches the debtor's property. An attachment before judgment, though prior in date, can be of no avail as against an attachment under a decree. A sale upon an attachment before judgment, may legally follow after decree, only if there are no conflicting attachments. *Krishna Iyen* vs. *Neelacanda Iyen.*

2 T. L. R., 42.

2.—*Subsisting force of after decree. Rival decree-holder. Effect of sale under first attachment.*

The question having been raised whether an attachment before judgment, would entitle the attaching creditor to sell the property without issuing a fresh attachment after decree, as against a rival decree-holder who applied for attachment subsequent to the first creditor's decree:

Held that as the order for the first sale was made at a time when there was no conflicting attachment, the sale made in pursuance of that order is legal and and efficacious to vest the property in the purchaser (*Krishna Iyen* vs. *Neelacanda Iyen* reported at—2 T. L. R., 42 distinguished). *Chandy* vs. *Eapen.*

9 T. L. R., 72.

3. ALIENATION DURING ATTACHMENT.

1.—*Sale of property pending attachment in execution of decree.*

If a private alienation made pending an attachment in execution of a decree, is valid against a subsequent attaching creditor in the event of the decree for which the attachment was made being afterwards discharged, it is equally so as against all subsequent attaching creditors, whether they be the persons who first attached the property or otherwise; and so long as the subsequent attaching creditor does not claim under or through the first attachment, he is not, on the construction of S. 273 of the C. P. C., entitled to avoid the prior private sale and to treat the property as still saleable as the property of the judgment debtor (vendor.)

Krishna Iyen vs. *Kshathrpala Pillai.*

6 T. L. R., 40.

2. *Private sale for satisfaction of the decree—whether valid—order of withdrawal of attachment whether necessary where decree is satisfied. Object of prohibition against private sale of property under attachment. Secs.* 272 *and* 273 *of the Civil Procedure Code.*

A obtained a money decree against B and C and attached their property. During pendency of the attachment the property was, for the express purpose of satisfying the decree, sold to plaintiff's vendor who deposited the decree-amount in court. B subsequently contended in the Munsiff's Court that his having suffered incarceration in Jail for the decree-debt, must be taken to have completely discharged the debt, and was allowed to draw the money before the order was reversed in appeal. A, after the reversal of the Munsiff's order, instead of recovering from B, the amount wrongly drawn by him, moved the Munsiff's Court to proceed with

the sale of the property, in pursuance of the original attachment. The present suit is for a declaration that the property is not liable to sale in execution of A's decree, or to recover the purchase money from A, B and C. It being contended (i) that the original attachment not having been expressly withdrawn by an order of court, must be considered to be still in force ; and (ii) that the private sale to Plaintiff's vendor having been made during pendency of the attachment, is null and void.

Held that the law does not require the formal withdrawal of an attachment on payment into Court of the decree-debt, but leaves it to the option of the parties to apply for and obtain the order of withdrawal of attachment (section 272 of the Civil Procedure Code.)

Held also that private sales of properties under attachment are prohibited in the interests of the attaching creditor only. (S. 273 C. P. C).

Held further that as the purchase money was paid into Court for the benefit of the creditor, the private sale was good and binding on the decree holder ; and that he should have recovered the same from the debtor to whom it was wrongly paid by the Munsiff.

Held, consequently, that the plaintiff's purchase, in the circumstances of the case, entitles him to the declaration sought for. *Madhavan* vs. *Kurien*. 12 T. L. R., 23.

4. EFFECT OF ATTACHMENT.

1. *Attachment in the execution of a decree-debt. Possession of property for more than twelve years.*

Held that a party who has been in possession on his own account for more than 12 years, without any recognition of the claims of the Judgment-debtor, is entitled, on the strength of such possession to an order releasing the property from attachment made in execution of a decree-debt unless it is shown that the judgment-debtor has still a present right, title, or interest in the attached property ; that if the claims of a party have been time-barred, and are thus unenforceable his bare right, if any, is valueless, and the purchaser who would stand in the shoes of such party, can derive no benefit whatever from the purchase ; that an attachment and sale of such valueless rights are not contemplated by the C. P. C. and before a property can be put up for sale it must be shown that the debtor has on it some present right, title or interest capable of valuation ; and that when a person in possession of property sold in execution as being the property of another, sues to establish his title to such property, the burden of proof is

not upon him but upon the purchaser; and that on failure of proof of title in the Judgment-debtor, Plaintiff is entitled to a decree declaratory of his right to the property as against the defendant. *Maluku Mammathu* vs. *Soalakaumal.*

7. T. L. R., 134.

2.—Effect of.

Held that the fact of a debt being under attachment by a Court in execution of a money-decree against the obligee of a bond is insufficient to save limitation. *Padmanabhan* vs. *Vallinayagam.*

4. T. L. R., 22.

See cases under "Limitation Act, Art. 153."

11. T. L. R., 13 & 11. T. L. R., 213.

5.—ATTACHING CREDITOR'S RIGHTS AND LIABILITIES UNDER ATTACHMENT.

1.—*Held inter alia* that an attaching creditor does not "get" the property attached, but only prohibits alienation of the property by the debtor until the decree debt is paid and discharged. No sooner the debt is paid than the creditor ceases to have anything to do with the property. *Govindan* vs. *Easwaran.*

12. T. L. R., 188.

2.—*Effect of attachment without bringing attached property to sale. Attaching creditor's right to recover by suit money deposited with Sircar.*

Plaintiff, as the execution creditor of a party who (as is alleged) is entitled to certain money deposited with the Sircar, attaches this deposit, in execution of his decree by a prohibitory order. The Sircar denies that any such money is due and refuses to pay the same. The Plaintiff thereupon obtains an order of the Court (which passed the decree in his favour) to recover the money from the Sircar authorities, and brings the suit on the basis of that order.

Held by a FULL BENCH (1) That Plaintiff, has not by mere attachment and order of the Munsiff, acquired such right to, or property in, the deposit alleged to exist in the custody of 1st Defendant—the Sircar—as to entitle Plaintiff to maintain a suit for recovery of the deposit. (2) That Plaintiff's right to bring a suit may only be acquired by purchase at a sale in pursuance of the attachment made. *Ramasawmy Aiyen* vs. *Dewan of Travancore.*

10. T. L. R., 128.

3.—*Of property in the possession of person other than the judgment-debtor—Trespass.*

ATTACHING CREDITOR'S RIGHTS, &c.—(*Concluded*).

Attachment and sale of property in the possession of a person other than the Judgment-debtor is trespass by the Judgment creditor when the debtor himself has no title to the property. *Chako* vs. *Ittunnan*.

9. T. L. R., 35.

ATTACHMENT AND SALE.

——*Right of Sircar to summary attachment and sale. Held* by a majority of the Court that it is not competent to the Sircar to attach summarily the property of its executive officials in case of their default, when such property has not been tendered in security and no decree or order directing the attachment has been passed by a duly constituted Court of Civil Jurisdiction. By the Chief Justice (dissenting) that such right is sanctioned by usage, that the usage is not unreasonable, but that the procedure to be followed in such cases is not defined and the matter calls for immediate legislation. *Sircar* vs. *Subba Iyen*.

2. T. L. R., 70.

ATTESTATION.—*of document—effect of, as against attestor.*

See cases under "Estoppel." 12. T. L. R., 91.

ATTUVALI—meaning of the term—Having regard to the fact that in this country rivers and backwaters are so intermixed as to make it often difficult to determine where a river terminates and a backwater begins, it is not unlikely that *Attuvali* was used as synonymous with "waterway" in contradistinction to "*Karavali*" "landway." The question however has not been finally settled. *Rangaswami Mudaliar* vs. *Sirkar*. 5. T. L. R., 85.

AUCTION PURCHASER.

1.—*right of—to apply for possession—time allowed.*

The right of an auction purchaser to apply for possession does not accrue till the certificate is granted and the time allowed for such application is 3 years from the date of the certificate. *Marthia Valikan* vs. *Govinda Ekudan*. 3. T. L. R., 65.

2.—*Subsequent reversal of the decree.*

When a judgment-debtor's property is sold in public auction in execution of a valid subsisting decree of an Appellate Court and a third party *bona-fide* purchases it, the debtor cannot sue to set aside the sale by reason of the subsequent reversal of the decree upon review, but must look to the judgment-creditor for the value of the property sold. *Raman* vs. *Narayanan*.

3. T. L. R., 95.

3.—*Suit to eject by claimant-burden of proof.*

A suit by a claimant to immoveable property attached in execution of a decree, to eject the purchaser at the Court sale, is not time barred, if brought within one year of the date of the dismissal of the claim-petition. In suits for ejectment the defendant if in possession is entitled to call upon the plaintiff to prove superior title as against him. *Mackoji* vs. *Abasali.*

10. T. L. R., 40.

4.—*Of Hypothecation bond sold as moveable property.*

Suit by a purchaser of a hypothecation bond at a Court auction, to recover from the obligor and the hypothecated property the amount due under the bond. The Court sale not having been conducted under the procedure applicable to real property and the sale certificate granted to plaintiff not having been registered, it is contended that the sale is *ab initio* void.

Held that a hypothecation deed consists of two obligations (1) to pay the debt as a simple debt, and (2) the creation of a charge on the real property in the way of collateral security.

That the failure to adopt the procedure prescribed for sale of immoveable property and the non-registration of the sale-certificate deprive the purchaser of the right to recover the debt as a specific charge on the property hypothecated; but that the sale of the bond as moveable property, does not invalidate the transfer to the purchaser, of the right to enforce the first obligation, *i.e.*, the right to recover the debt from the obligor (defendant) and his property, as a simple debt. *Krishnan* vs. *Aiyappan.*

11. T. L. R., 177.

5.—*Of first mortgagee's rights—subsequent mortgagee's rights to redeem.*

Where a prior mortgagee brings the mortgaged properties to sale in a suit to which a subsequent mortgagee is not made a party, and where the latter has no knowledge of either the suit or sale, his (the latter's) right to redeem from the purchaser at the sale, will not be affected by the decree or the sale. *Krishnan* vs. *Govindar.*

12. T. L. R., 141.

6.—*Title of, without delivery of possession—Agricultural year—time of redemption.*

The delivery of property is not legally necessary, to complete the title of the auction purchaser. His title becomes absolute on the confirmation of the sale, after which he is fully entitled to convey his rights to others.

AUCTION PURCHASER.—(*Concluded*).

The agricultural year under the usage of the country, commences with Chitrai (medom) [*vide* II, Govinda Pillai's select decisions page 71] and redemption should be made before that time of each year. The fact that the deed where-under redemption is sued for was not executed in the month of Chitrai, cannot, where the contract is silent on the point, alter the date of redemption fixed by usage. *Korathu* vs. *Cheria* 12. T. L. R., 111.

1.—AUCTION SALE.—*Purchase by mortgagee in possession—effect of—confirmation of sale—certificate of sale.*

Where A, the mortgagee of immoveable property who purchased the equity of redemption of a certain property sold in auction for a decree debt due by B, the mortgagor, omitted to obtain a certificate of sale from Court to evidence his purchase and symbolical possession of the property under Court process.

Held that the purchaser's title became perfect by the confirmation of the sale by Court; that the purchaser being already in actual possession, no symbolical possession need be obtained; that the grant of certificate is a duty of Court after confirmation of sale; and that there is no provision in the code requiring the obtaining of certificate by purchaser to complete the sale. *Narayan* vs. *Raman*. 12. T. L.R., 192.

2.—*Cancelment of, on the ground of Judgment creditor's failure to certify satisfaction of decree made out of Court.*

A Judgment creditor whose decree debt was satisfied out of Court failing to certify the fact to Court and having brought certain property belonging to the debtor to sale for satisfaction of the decree, the debter sued to cancel the sale, or to obtain such relief, as the Court deemed proper. The Lower Court dismissed the suit as not maintainable. On appeal,

Held that the debtor cannot seek to set aside the sale complained of. That, however, a suit is maintainable as against the Judgment-creditor for damages caused to the decree debtor by the former's breach of contract to certify to Court the satisfaction of the decree. That the contract to certify to Court the payment of the decree debt is implied in the payment. And that, therefore, the dismissal of the suit altogether is wrong. *Govindan* vs. *Ramakrishna Iyen*. 11. T. L. R., 27.

3.—*Effect of, on valid subsisting hypothecation.*

Held, that a court sale of property held while there was a valid hypothecation subsisting thereon, would be subject to the lien created by such hypothecation. *Sankaranarayana Iyen* vs. *Kathija Ummal*. 11. T.L. R., 67.

BAIL.

1.—*Release.*

A release on bail under S. 125 of the old Criminal Procedure Code pending the final orders of the Magistrate is not equivalent to a discharge. *Sirkar* vs. *Velayudhan.* 2. T. L. R., 83.

2.—*Whether acceptable from foreigners—Extradition in case of forfeiture of bail.* No bail given by any person not possessing property (moveable or immoveable) in Travancore, shall as, a rule, be accepted. The British Law does not recognize extradition in such cases. 12. T. L. R., App. 3.

BARRED DEBT.

Karanaven's power to revive.

Held by a FULL BENCH that purakkadoms or further advances cannot keep an existing mortgage alive by giving a fresh starting point for limitation ; and that to keep the mortgagor's claim alive, a written acknowledgment of the mortgagor's title by the mortgagee under his signature is necessary.

Held also that a right, the action in respect of which has been barred, may be made the subject of a legally enforcible fresh contract and that a Karanaven has power to revive a barred debt. *Krishnan* vs. *Padmanabhan.* 9. T. L. R., 166.

See *also cases under appropriation of payments.*

BENAMI TRANSACTION.

1.—*Interest in property acquired by a Hindu father in son's name.*

The presumption in the case of a purchase made by a Makkathayam Hindu, in the name of his son, is that it is benami. In actions relating to property so purchased, the burden of proving that the purchase was made for the sole benefit of his son, is on the party that asserts it ; and where the rights of creditors or auction-purchasers are in issue, very strict evidence should be required from the objector, to disprove such rights. *Mallan* vs. *Subban.* 9. T. L. R., 201.

2.—*Benami bond.*

The parties mainly interested in the suit are Elavas by caste, governed by the Marumakkatayam law modified by usage which entitles the children to a moiety of the self-acquisitions of their father made during their mother's life time.

The plaintiff sued to recover money due under a bond executed to 2nd defendant—plaintiff's son by a deceased wife—by 1st

defendant, alleging that the money lent was his and that the 2nd defendant was merely a benamidar.

Held that a person claiming an amount due under a bond standing in another's name, must make out a strong case in his favour:

That the decisions of the British Courts holding that the claimant must be taken to have discharged his burden, if he proved that the money advanced was his, do not apply to the present case, it being usual for fathers, under the Marumakkatayam law, to advance their money and take bonds in the names of their children for the *latter's benefit*:

And that in a case like the present one, the claimant must prove not only that the money advanced was his, but also that he did not intend to pass the right in the money to the relation in whose name he obtained the bond. *Kumaran* vs. *Chanthanamari Pillai.*

10. T. L. R., 77.

BHANG.—*Being in possession of any preparation containing bhang—whether an offence. See cases under Regulation VI of* 1063. 9. T. L. R., App. 5.

1. BIGAMY—*Hindu Convert to Christianity—second marriage of, during unconverted first wife's lifetime. Absence of law to compel first wife to join her husband—effect of.*

Where a Hindu Convert to Christianity, while having a Hindu wife who adhered to her original faith, contracted a second marriage:

Held that the husband and the second wife were guilty of the offence of bigamy:

And that the absence of a law in the state, to compel the first wife to join her husband on pain of their relationship as husband and wife being determined, would not affect the nature of the offence. *Sirkar* vs. *Annamma Varithal.*

11. T. L. R., 147.

2.—*Christian marriage—S. 494, Penal Code.* The essentials of the contract of marriage among christians is substantially the same everywhere, and by marriage must be understood the voluntary union for life of one man and one woman to the exclusion of all others. Marriage is something more than a mere contract. It involves a complete change of status and cannot be modified according to the pleasure of the parties. For the contract of christian marriage, the free and reasonable consent of the parties

is indispensable. Where, therefore, a boy of seven was said to have contracted a marriage with a girl of 6 (the parties being Syrian christians) and it was not proved that the so-called marriage was subsequently validated, it was held that such marriage was not binding and that, therefore, the subsequent marriage of one of them with a third party did not amount to the offence punishable under S. 494, of the Indian Penal Code.

Hyde vs. *Hyde followed.*
Sirkar vs. *Mammen.* 2. T. L. R., 89.

3.—Marriage among Jacobite Syrians—section 494, Penal Code—canon and customary laws—effect of.

Held overruling the decision in Criminal Appeal No. 35, of 1057, published at page 90, of the Travancore Law Reports, vol. II, (Reprint vol. II, page 89):

(1)—That the canon law which fixes the marriageable age for men and women at 14 and 12, respectively, has no effect unless ratified by the secular sovereign of the State;

(2)—That in the absence of a statutory enactment, the law governing the marriages of Syrian Christians in Travancore is, as in cases of inheritance and succession, the law of custom, and not the canon law;

(3)—That the cannon law cannot be adopted without evidence that it is binding on the people to whom it is sought to be applied;

(4)—That so far as the Syrian Christians in Travancore are concerned there is cogent evidence that they do not consider the canon law as binding on them;

(5) That there is evidence of a valid custom of numberless marriages being solemnised in the Syrian Church, though contracted below the age of 12 years;

(6) And that the marriage should be deemed valid in the absence of statutory prohibition. *Sirkar* vs. *Kuruvila.*
11. T. L. R., 33.

BILL.—

Held that a document which simply recites the fact of receipt of a certain amount is not a bill in the proper sense of the word. *Ayippu.* vs. *Verkey.* 4. T. L. R., 73.

BOND.

1.—*For concubinage—immoral contract.*

Suit for recovery of money due under a bond executed by

defendant to plaintiff providing that the latter (who was the wife of another) was to be paid Rs. 400 for living as plaintiff's mistress.

Held that the bond was executed for an immoral purpose and cannot, therefore, be enforced by courts.

10. T. L. R., App. 9.

2.—*For paddy payable on demand—suit—cause of action—Limitation.*

Suit for recovery of paddy lent under a bond providing for repayment of paddy, with interest, on demand, on the ground that, in spite of demand made, the defendant has failed to deliver the paddy to plaintiff.

The question having been referred to the FULL BENCH what article of the schedule appended to the Limitation Regulation applies to the case :

Held that the case must be taken as an action brought for compensation for breach of contract not specially provided for, and is governed by art. 95; and that the prescribed period of 3 years runs from the date of the breach, *i.e.*, the date of demand. *Subramania Aiyan* vs. *Alakanperumal.* 10. T. L. R., 89.

2.—*payable on demand—limitation—when part consideration is old debt.*

Held by a FULL BENCH (Sitaramier, J. dissenting) that the limitation applicable to a suit to recover money due under a document which provides for payment on demand, is 6 years under art. 97 of the Limitation Regulation; and that it makes no difference that part of the consideration recited in the document consists of old debt. 9. T. L. R., App. 23.

3.—*Not specifying date of repayment.*

Held that the cause of action on a bond which does not specify any particular day for payment of the principal, arises on the date the bond was executed or at the time the default in the payment of interest occurred. *Padmanabhen* vs. *Vallinayagom.*

4. T. L. R., 22.

See cases under Limitation S. 20 *and Articles 65 & 98.*
12. T. L. R., 37.

BOND AND PROMISSORY NOTE.

——*Distinction between. Stamp Regulation S. 3. Levy of Stamp duty and penalty, when the laws at the date of execution of instrument and levy of duty and penalty are different—Recognised agent—prosecution of suit.*

BOND AND PROMISSORY NOTE.—(*Concluded*).

Under S. 3 of the Stamp Regulation, an instrument whereby a person obliges himself to pay money to another without an undertaking to pay to the latter or his order or to bearer, is a Bond and not a promissory note.

The amount of stamp duty payable on any instrument is regulated by the law in force at the date of execution thereof while the amount of penalty due on the same is to be fixed under the law in force at the time of levy.

A recognized agent coming under clause 2 of S. 15 C. P. C. cannot prosecute a suit in his own name, though after making his principal formally a party to the suit, he may conduct it as a recognised agent. A defect of party of the kind cannot justify the dismissal of the suit, the fair procedure being to allow a reasonable time to make the principal a party. *Makoji* vs. *Kulathoor Aiyan.* 8. T. L. R., 30.

BOUNDARY STONE.

—— *See cases under Regulation III of* 1058.

10. T. L. R., App. 21 and 12. T. L. R., App. 36.

BRAHMINS.—*Liability to rigorous imprisonment.*

There is no law or custom exempting Brahmins from liability to rigorous imprisonment. *Sirkar* vs. *Aroomoogam Aiyen.*

3. T. L. R., 63.

BREACH OF CONTRACT OF SERVICE.

See cases under Penal Code. S. 490.

BREACH OF THE PEACE—threat of—Criminal Procedure Code, SS. 491, 530 and 532 (old).

Where the dispute is of a civil nature and a breach of the peace is apprehended, the proper procedure is to demand security for keeping the peace in the manner provided by the Criminal Procedure Code, from the party suspected. 1. T. L. R., App. 9.

BURDEN OF PROOF.

A. Generally.

B. 1. Auction-purchaser.
2. Benami transactions.
3. Consideration.
4. Damages.
5. Declaration of title.
6. Easements.
7. Hindu Law.

BURDEN OF PROOF.—(*Concluded*).

8. IDENTITY OF MORTGAGED PROPERTY.
9. INSANITY.
10. INTERVENOR.
11. JENMI AND KUDYAN.
12. JURISDICTION.
13. LANDLORD AND TENANT.
14. MALABAR LAW.
    (*a*) DEBTS.
    (*b*) MORTGAGES.
15. MINORITY.
16. MISAPPROPRIATION.
17. POSSESSION AND PROOF OF TITLE.
18. PUBLIC ACCOUNTS.
18-A. PUBLIC DOCUMENTS.
19. REVENUE ORDER.
20. SALE BY GUARDIAN.
21. SUMMONS:

A. GENERALLY.

——*Held* that where parties or their vakils are at issue on a question of law, it is the duty of the presiding judge to decide on whom lies the onus of proof on such point, and to call upon the parties to adduce evidence in the order determined by him. *Kunjen Marakkar* vs. *Neelacandan*. 6. T. L. R., 136.

B. 1. AUCTION-PURCHASER.

——*Sale held in execution of decree against Tarawad—impugnment of—purchaser's title.*

Held that a purchaser under a sale held in execution of a decree against a Marumakkatayam Tarwad, if not a party to the suit wherein that decree was passed, is not bound to prove either consideration or Tarawad necessity for the debt which formed the basis of the decree as against subsequent objectors; and that his title under the purchase is unimpeachable so long as no fraud is proved. *Samu Aiyan* vs. *Kunji.Kammatti*.

8. T. L. R., 125.

2. BENAMI TRANSACTIONS.

1.—*Interest in property acquired by Hindu father in son's name.*

The presumption in the case of a purchase made by a Makkathayom Hindu, in the name of his son, is that it is Benami. In actions relating to property so purchased, the burden of proving that the purchase was made for the sole benefit of the son, is on the party that asserts it; and where the rights of creditors or

auction purchasers are in issue, very strict evidence should be required from the objector, to disprove such rights. *Mallan* vs. *Subban*. 9. T. L. R., 201.

2.—*Elavas.*

The parties mainly interested in the suit are Elavas by caste, governed by the Marumakkathayam law modified by usage which entitles the children to a moiety of the self acquisitions of their father made during their mother's life-time.

The plaintiff sued to recover money due under a bond executed to 2nd defendant—plaintiff's son by a deceased wife—by 1st defendant, alleging that the money lent was his and that the 2nd defendant was merely a benamidar.

Held that a person claiming an amount, due under a bond standing in another's name, must make out a strong case in his favour.

That the decisions of the British courts holding that the claimant must be taken to have discharged his burden, if he proved that the money advanced was his, do not apply to the present case, it being usual for fathers, under the Marumakkathayam law to advance their money and take bond in the names of their children for the *latter's benefit.* And that in a case like the present one, the claimant must prove not only that the money advanced was his, but also that he did not intend to pass the right in the money to the relations in whose name he obtained the bond. *Kumaren* vs. *Chanthanamari Pillai.* 10. T. L. R., 77.

3. CONSIDERATION.

1.—When a bond reciting the receipt of consideration is deliberately executed and given over, the burden of proof is on the party that denies the receipt of consideration.

Nayinamathoo vs. *Vappukkutti.*

1. T. L. R., 70.

2.—*Admission of document and of greater part of consideration.*

Where documents are admitted and the consideration in great part undisputed, it is on the defendant to make out that the whole consideration has not been received. *Narayanan* vs. *Kunju.*

1. T. L. R., 81.

3.—*Consideration paid after date of document.*

Where a creditor sues on a bond and admits that at the time of its execution, or before it, consideration had not passed, but that the consideration was to be had afterwards, no presumption

of consideration against the executant would arise; and the burden of proving that the consideration was paid after the date of the document will lie on the creditor—(plaintiff.) *Velayudhan.* vs. *Cochookunju.*

12. T. L. R., 28.

4.—DAMAGES.

——*Suit for, based on Malicious Criminal prosecution—grounds of action.*

The failure to substantiate a criminal charge, would not, by itself, render the accuser liable to a civil action for malicious prosecution. To support such an action, proof of malice alone is insufficient; and the accuser will be liable only where plaintiff proves malice combined with want of reasonable and probable cause for the charge. *Sambhu Empran* vs. *Easwaran Empran.*

12. T. L. R., 42.

5.—DECLARATION OF TITLE.

1.—*Share of a divided parcener.*

A and B were divided members of a Hindu family. C sued B and obtained a decree. Certain property having been sold in auction under that decree, the Judgment-creditor C was declared the auction-purchaser. A then sued C in order to have it declared that the said property was not liable for B's debt. No evidence was adduced on either side to show that the property in dispute had fallen to the share of either of the divided parceners.

Held that, under these circumstances, the burden of proof was on plaintiff (A) to show that it had fallen to his share, and that since he failed to adduce evidence, his suit was rightly dismissed. *Muthu.* vs. *Narampu.* 2. T. L. R., 4.

2.—*Declaration of title—suit for.*

Held that in suits for mere declaration of title, the burden of making out the title affirmatively is on the plaintiff; and possession of property is a sufficient shield against all who are not able to establish a better title than the actual possessors. *Kutti.* vs. *Padmanaban.* 5. T. L. R. 90.

6.—EASEMENTS.

—Right of way.

Held by a majority of the FULL BENCH that the burden of proof that a certain procession through a thoroughfare, calculated to offend the social and religious feelings of, or to cause annoyance or heart-burning to, the residents on both sides of that thoroughfare, or

those to whom the thoroughfare appertains, is not an innovation but is one sanctioned by custom, is on the persons who wish to carry on the procession. *Oothoopu* vs. *Joseph.*

5. T. L. R., 93.

7. HINDU LAW.

1.—*Maintenance to wife.*

On an application for maintenance by a wife, it is not for the applicant to prove her husband's ability to support her, but for him to show that he has no means of supporting himself or his wife.

10. T. L. R., App. 12.

2.—*Nature of father's debt—suit to set aside Court-sale of joint property for deceased father's debt.*

Under the Hindu Law of the Benares School, sons cannot seek to set aside a sale of joint family property, held in execution of a money-decree against their father, although they may not have been parties to the decree or the execution proceedings, unless they can show that the debt whereon the decree was obtained, was contracted for illegal or immoral purposes.

The purchaser is not bound as against sons impugning the sale to show that he specially bargained for and obtained the interests of the sons also, in execution of the decree against their father.

The presumption arising from the representative character and position of the father and his competency to charge also the co-parcenary interests of his sons in the estate with his proper debts, is that the sale in execution passed to the purchaser the entire estate sold and not the debtor's share alone.

Such presumption may be rebutted by proof of special circumstances tending to establish that the debtor's interest alone in the estate was intended to be sold. The use of the words "right, title and interest of the debtor" in the sale-proclamation or certificate is insufficient to raise the counter-presumption, as they must be construed to mean the right, title and interest which the judgment-debtor was, with reference to the nature of the debt, capable of conveying in the property attached for sale. *Yegna Subramania Aiyan* vs. *Sankaranarayana Dhiskhitar.*

11. T. L. R., 18.

3.—*Debt borrowed by member of undivided family.*

Held that, under the Mitakshara Law, except in the case of father and son, the onus of proving that a debt borrowed by the Manager of a joint Hindu family is a family debt, is on the creditor. *Narasinga Pye* vs. *Srinivasa Kamathee.* 7. T. L. R., 1.

8.—IDENTITY OF MORTGAGED PROPERTY.

——In a suit for redemption of mortgage, the position of the mortgaged land, as given by the plaintiff, should be accepted as correct, unless proof to the contrary is adduced by the defendant—mortgagee. *Keralen vs. Narayanen.* 9. T. L. R., 157.

9.—INSANITY.

——*Lucid interval.*

The law presumes sanity; but when insanity is once established, the onus of proving lucid interval is on the party asserting it. *Harihara Aiyan* vs. *Kumaran.* 8. T. L. R., 164.

10.—INTERVENOR.

——*As to title and possession of intervenor impugning hypothecation.* Suit to recover money due under a hypothecation bond. The 3rd defendant intervened and claimed the hypotheca, independent of the mortgagors (defendants 1 and 2). The Munsiff gave a decree for plaintiff; but in appeal that decree was reversed on the ground that the hypothecation had had no consideration. The plaintiff appealed. *Held* that as the intervenor claims the property mortgaged, independent of the mortgagors, he must establish his title and possession, to get the property exonerated from liability under the mortgage; that he is not competent to question the *boná-fides* of the mortgage, and that the question of consideration is immaterial for the decision of the case. *Mahomed Kunju* vs. *Akammathu.* 10. T. L. R., 81.

11. JENMI AND KUDYAN.

Suit for redemption of mortgage. In a suit by a Jenmi for the redemption of a mortgage, the burden of proving that the property in dispute does not come within the provisions of the Royal Proclamation, lies on the plaintiff. *Vasudevan* vs. *Cochoo Pillai.* 3. T. L. R., 12.

12. JURISDICTION.

1.—*Held* that it is for the defendant who sets up the plea, to show that the Courts have no jurisdiction in any particular case; the Code of Civil Procedure providing that Civil Courts shall take cognizance of all suits of a Civil nature, with the exception of those of which their cognizance is barred by the laws and customs of Travancore. *Padmanabhan* vs. *Sirkar.* 1. T. L. R., 57.

2.—*Held* that the onus of substantiating a plea of want of jurisdiction, when taken in proper time, is on those who urge it, the law making a presumption in favour of the existence of jurisdiction, until the contrary is shown. *Palani* vs. *Sivakami.* 4. T. L. R. 68.

13. LANDLORD AND TENANT.

Proof as to permanency of tenancy.

Held that the ordinary presumption of law arising from long possession and payment of rent, is that the tenancy is from year to year, and it is for the tenant who sets up a permanent tenure to rebut the presumption by proof of his contention. *Neelakandan Nampuri* vs. *V uderan Nampuri.*

12. T. L. R., 33.

14. MALABAR LAW.

(*a.*) DEBTS.

1.—*Debt contracted by managing Karanaven.* A debt contracted by a managing Karanavan is presumed to be a family debt and the burden of proving the contrary is on the party denying it.

Thomman vs. *Ittuly.* 3. T. L. R., 42.

2.—*Invalidity of debt contracted by Karnaven of Malabar Tharawad.*

Held that the presumption of Malabar Law being that a debt contracted by a Karanavan is for Tarawad purposes, it is on those who dispute the charge to prove the contrary. *Mathevan* vs. *Raman.* 5. T. L. R., 28.

3.—*Debt of junior member in management.*

Held that the debt of a junior member in management of the affairs of a Malabar Tarawad, should be shown by the creditor to have been incurred to meet Tarawad necessity before it could be declared a charge on Tarawad property. *Krishnan* vs. *Raman.*

7. T. L. R., 127.

(*b*) MORTGAGE.

——*Mortgage by managing member—Family necessity.*

Held that creditors who deal with a Junior member acting as a manager, with the permission, express or implied, of the real Karanavan are bound to use great precaution and to see that the manager is acting within the scope of his authority and for the benefit of the Tarawad; and that, hence, the law demands from them strict proof of family necessity which compelled the temporary manager to pledge the credit of the Tarawad property, and the burden of proof, in such cases, is upon the creditor and not upon the representatives of the Tarawad seeking to annul the transaction; but the case would be different if the party creating the encumbrance is himself both the senior member and manager of the Tarawad. *Govinden* vs. *Iyappen.* 6. T. L. R., 30.

MORTGAGE.—(*Concluded*).

2.—*Family necessity.*

Held that as soon as the factum of a mortgage and the payment of full and adequate consideration therefor are established by the mortgagee, the burden of making out the absence of family necessity is thrown upon those who impeach the validity of the transaction. *Narayanaroo Namburipad* vs. *Narayanen.* 5. T. L. R., 33.

15. MINORITY.

——*Cessation of disability as minor.*

Held that the burden of proving that the disability of plaintiff's as minors, ceased only within 3 years preceding the date of suit, is on themselves. *Kadarsa Labbai* vs. *Cassim.* 9. T. L. R., 185.

16.—MISAPPROPRIATION.

——*Breach of trust by servant—proof as to misappropriation.*

Held that, in the case of a treasurer charged with the embezzlement of certain currency notes from the Residency Treasury, the prosecution is not bound to prove the actual misappropriation of the notes, but that the charge may be proved by evidence of the receipt by the accused of money which is not duly accounted for. *Sirkar. vs. Govindaswamy Moodeliar.*

11. T. L. R, 57.

17.—POSSESSION AND PROOF OF TITLE.

1.—*Action against a wrong-doer.*

Held that actual or constructive possession, without proof of any title to the property is generallys sufficient to support an action against a wrong-doer, and that the burden of proof, in such a case, is on the defendant. *Subramania Aiyar* vs. *Cheria.*

4. T. L. R., 39.

2.—*Suit by claimant to eject purchaser at Court sale—Superior title when defendant is in possession.*

Held that in suits for ejectment, the defendant, if in possession, is entitled to call upon the plaintiff to prove superior title as against him (defendant). *Makoji* vs. *Abasali.*

10. T. L. R., 40.

3.—*Attachment in execution of a decree debt—possession of property* for *more than* 12 *years.*

Held that a party who has been in possession on his own account for more than 12 years, without any recognition of the claims of the Judgment-debtor, is entitled, on the strength of such possession to an order releasing the property from attachment made in execution of a decree-debt unless it is

POSSESSION AND PROOF OF TITLE.—(*Concluded*).

shown that the Judgment-debtor has still a present right, title or interest in the attached property; that if the claims of a party have been time-barred, and are thus unenforceable, his bare right, if any, is valueless, and the purchaser who would stand in the shoes of such party, can derive no benefit whatever from the purchase; that an attachment and sale of such valueless rights are not contemplated by the Civil Procedure Regulation, and before a property can be put up for sale, it must be shown that the debtor has on it some present right, title or interest capable of valuation; and that when a person in possession of property sold in execution as being the property of another, sues to establish his title to such property, the burden of proof lies not upon him but upon the purchaser; and that on proof of failure of title in the Judgment-debtor, plaintiff is entitled to a decree declaratory of his right to the property as against the defendant. *Malukku Mamathoo* vs. *Soolaka oommal.* 7. T. L. R., 134.

18. PUBLIC ACCOUNTS.

——*Presumption as to entries in.*

The ordinary presumption in the case of entries in public accounts is that they were properly made. The burden of proving that they are the result of misrepresentation, and fraud, is on those who take exception to them. *Karayalen Pillai* vs. *Sheikamathoo Ravuthar.* 9. T. L. R., 188.

18 A. PUBLIC DOCUMENTS.

——*Presumption in favour of their genuineness.*

Held that public convenience and interests require that every presumption should be made in favour of the genuineness of public documents; that those who impeach them must substantiate their plea and that every public document duly filed in courts of justice, under the express provisions of law, must be presumed to be genuine until the contrary is proved. *Sreedharan Moothathoo* vs. *Raman.* 7. T. L. R., 18.

19. REVENUE PROCEEDINGS.

——*Suit to set aside revenue order —constructive party to the proceedings.*

Held that, in a suit for cancelment of the revenue registry, the party who pleads the limitation of one year prescribed by Art. 10 of the Limitation Regulation, must prove affirmatively that his adversary was a constructive party to the proceedings which terminated in the order under suit. *Dewan of Travancore* vs. *Krishnan Empran.* 12. T. L. R., 118.

20. SALE BY GUARDIAN.

——*Held* that to declare a sale by a guardian (in this case, mother) of property of a minor (son) binding on the minor, when he becomes of age and disputes its validity, it is incumbent upon the vendee to prove positively that the sale was given for good consideration and that such consideration was applied by the guardian for the benefit of the minor. *Pariathu* vs. *Veevi Pillai.*

5. T. L. R., 82.

21.—SUMMONS.

Disobedience to—Intention. In a case of disobedience to summons, all that the prosecution need prove is the service of the summons and the non-appearance of the defendant. The intention of the defendant is to be presumed from proof of these two facts. 9. T. L. R., App. 20.

CALENDARS.

1.—*Appeal statements. The rules and forms for the same. Criminal circular No 3, of 1058.* 1. T. L. R , App. 16.

2.—*2nd and 3rd class magistrates.*

Ordered that the 2nd and 3rd class magistrates should send their calendars to the first class magistrates. *Criminal circular No. 10 of 1057.* 1. T. L. R., 38.

3.—*Magistrates of the 1st class.* Ordered that the magistrates of the 1st class do send to the High Court within 48 hours of the passing of sentence, duplicate copies of their calendars in cases tried by them. *Criminal Circular No* 13 *of* 1057. 1. T. L. R., 39.

4.—*Notes to be made in regarding examination of witnesses.*

All criminal courts shall note whether all the witnesses cited by the prosecution were examined; whether the examination of any witness cited either for defence or for prosecution was dispensed with, and, if so, by whom; and whether the prisoners stated that they had no witnesses. *Criminal Circular No.* 13 *of* 1061.

4. T. L R., App. 13.

5.—*Submission of, by District Magistrates and Sessions Judges.*

District Magistrates and Sessions Judges are directed to submit calendars received by them from the subordinate courts, to the higher authorities, within 48 hours from the time they receive them. On each calendar, the date on which the District Magistrate or Sessions Judge received it and the date on which he despatched it to the higher authority, should be noted. *Criminal Circular, No.* 12 *of* 1061. 4. T. L. R. App. 4.

CALENDARS.—(*Concluded*).

6.—*Cases of criminal breach of contract.*

Sub-magistrates shall, in future, send calendars in cases of criminal breach of contract to the High Court through the District Magistrate. *Criminal Circular, No* 12 *of* 1062.

6. T. L. R., App. 15.

7.—*Remarks on.*

The District Magistrates should record his remarks on calendars with his own hand.

10. T. L. R., App. 22.

8.—*of 2nd and 3rd class magistrates—Remarks on, by District Magistrates and Sessions Judges.*

The duties of District Magistrates and Sessions Judges in communicating to the High Court in the form of references, their remarks on calendars of 2nd and 3rd class magistrates pointed out.

11. T. L. R., App. 8.

CASTE.

1.—*Caste usages—cancelment of excommunication from caste—Declaratory suit.*

Held that the courts should not undertake to solve abstract propositions connected with caste usages and internal economy of caste, unless some property or right is involved in the case.

Held also that the suit for mere declaration of the invalidity of a sentence of excommunication from caste, passed against the plaintiff by his fellow-castemen, was held not maintainable, in the absence of a prayer for consequential relief in the shape of damages or otherwise. *Arunachalam* vs. *Mathevan.*

11. T. L. R., 82.

2.—*Caste usages—Decision on, by Head of community—Validity of—Konkani—Loss of caste by incarceration in Jail—Right of entry into temple—Damages—Punnyaham expenses—Injunction prohibiting further entry.*

Held that decisions on questions relating to caste usages, should generally be left to the communities or recognized heads of communities, and where there is such a decision, the courts should uphold the same, unless it is opposed to law or public policy.

The defendant (a Konkani priest) who had been once in Jail was held liable to pay the expenses of Punnyaham performed in a temple which (as alleged) had been desecrated by his entry thereinto before performance of the penances prescribed by the Head of his community, to atone for his loss of caste incurred by the incarceration in Jail.

CASTE.—(*Concluded*).

The Court also allowed the issue of an injunction prohibiting defendant from entering the temple until he shall have performed the prescribed penance. *Janardana Vadhyar* vs. *Naga Shenoi.*
11. T. L. R., 86.

CASTE DESIGNATION— *Deposition.*

When a witness states his religion, in order that it may be entered at the heading of his deposition, it is not necessary that any caste designation, should be added. It will be optional for the deponent to give his caste, if any.

Criminal circularNo 1 *of* 1060. 4. T. L. R., App. 1.

CATTLE.

1.—*Detention by private pound-keeper.*
See "Penal Code, S. 403". 9. T. L. R., App. 14.

2.—*Mischief by cattle.*
See "Penal Code, S. 426." 11. T. L. R., App. 21.

CATTLE SHED—*definition of.*

Cattle-shed is also a place for the custody of property within the meaning of S. 442. P. C. 12. T. L. R., App. 25.

CAUSE OF ACTION.

1. General Cases.
2. Admission.
3. Bond.
4. Chitty.
5. Contract.
6. Damages.
7. Declaratory Suit.
8. Hypothecation, Mortgage and Kanom.
9. Jurisdiction.
10. Limitation.
11. Res-judicata.
12. Restitution of wife.

1. GENERAL CASES.

1.—*Cause of action not set up in the plaint.*

A plaintiff cannot set up one cause of action and then seek to recover on another. *Kanthan* vs. *Thomma.* 3. T. L. R., 37.

2.—*Satisfaction of decree—res-judicata.*

Held that, in the present condition of the bar of the Munsiff's Courts, the interests of justice will be promoted if the Courts look to the real nature of the claim rather than to the form in which it is put forth.

Held also that the plaintiff's cause of action in this case, is the defendant's failure to certify satisfaction of the decree and that the plaintiff is entitled to claim as damages, what he has lost by the execution of the said decree.

Held further that the mere accident that a defendant is a party to both the suits cannot make the decree in one *res-judicata* with regard to the claim in the other. 7. T. L. R., 59.

2. ADMISSION.

—*Execution of barred decree.*

A, takes a Melkanom deed from B, the Jenmi, and sues to redeem the property thereunder conveyed from C and D on payment to them of the amount due under a prior Kanom deed executed to them. C and D admit A's claim, but E (who holds the property under a prior mortgage given to him by C and D) denies the genuineness of the Kanom and pleads that A is not entitled to any relief in that B, his (A's) Jenmi, failed to execute a prior decree he had obtained against C and D for redemption of the same.

Held that the admission of C and D does not bind E who claims under a prior title and that the decree bars the right of A and B to rely on the original cause of action which is merged in that decree and that they cannot redeem the property independently of the alleged Kanom, the execution of the decree being barred.

Held also that neither a Court of law nor a Court of equity will allow a party to execute, by a fresh suit a decree whose execution has become barred. *Kashavan* vs. *Oppappa.* 5. T. L. R., 30.

3. BOND.

1—*Bond not specifying date of repayment—Limitation—attachment.*

Held that the cause of action on a bond which does not specify any particular day for payment of the principal, arises on the date the bond was executed, or at the time the default in the payment of interest occurred.

Held also that the mere fact of a debt being under attachment by Court, in execution of a money decree against the obligee of the bond, is insufficient to suspend the operation of the Limitation Regulation. *Padmanabhan* vs. *Vallinayagom.* 4. T. L. R., 22.

2.—*Document not stipulating date of payment of principal.*

Held that where a document does not stipulate for payment of the principal, the cause of action for return of the money arises on the date of the instrument. *Varki* vs. *Kyparee.* 7. T. L. R., 29.

4. CHITTY.

—*Defaulting subscriber to a chitty.* A defaulting subscriber to a Chitty has a right of action for his share of the contributions as soon as the Chitty Conductor himself allows the scheme to fall through. *Kumaren* vs. *Kulathur Aiyar.* 1. T. L. R., 64.

CHITTY.—(*Concluded*).

See also cases under "Chitty."

6. T. L. R., 98.
10. T. L. R., 49.

5. CONTRACT.

—*Refund of deposit.*

Suit for value of stones which plaintiff contracted to supply the defendant (Sirkar) for demarcation purposes, and for refund of deposit made as security for the due performance of the contract, the defendant's refusal to receive the stones.

Held that the law does not recognize an entirely one-sided contract, reciprocal obligation being the soul of a contract; and that absence of demand may be a ground for refusing costs of the litigation.

Held also that the plaintiff is entitled to claim the value of the stones and the refund of the deposit. *Curthaswamy Achary* vs. *Sirkar.* 4. T. L. R., 84.

6. DAMAGES.

1.—*Public ways—Damages.*

Held that to maintain a suit for the removal of an encroachment on a public thoroughfare, the plaintiff "if a private individual," must allege some special damage. *Sankaranarayana Dhikshathar* vs. *Sankararama Josiar.* 2. T. L. R., 82.

2.—*Liability of Judges—malice.* No action lies against a Judge for acts done by him in the exercise of his judicial functions, provided such act is within his jurisdiction and the question of malice is irrelevant in such cases. 2. T. L. R., 98.

7. DECLARATORY SUIT.

SEE CASES UNDER "DECLARATORY SUIT."

7. L. R., 12.
9. T. L. R., 33.
9. T. L. R., 160.
11. T. L. R., 94.

8. HYPOTHECATION, MORTGAGE, AND KANOM.

1.—*Failure to pay rent—Kanom.*

A Kanom is not, strictly speaking, a mortgage in this country, but perpetual lease which can only be determined by any overt act of the tenant, such as denying the title of Jenmi, etc., and the limitation applicable is that provided for suits on leases. The rent falls due year by year, and the failure to pay affords a recurring cause of action; and therefore where the right to take rent is admit-

ted, no limitation can arise in the case of a lease-hold. *Raman Nampuripad* vs. *Madevan Nampuri.* 2. T. L. R., 49.

2.—*Suit by Karanaven of Malabar Tarawad. Deed of hypothecation by Anandraven—Pledge of Tarawad property as security. Declaratory Decree.*

A, one of the Anandravers of a Malabar Tarawad, executes a deed of hypothecation to B on the security of the Tarawad property. C, the Karanaven, seeks for a declaration that such hypothecation is void. B objects to the maintainability of the suit, on the ground that he has not taken any steps to enforce his lien upon B's Tarawad property and that C has, therefore, no cause of action to seek for such a declaration.

Held that A having only given a hypothecation upon the plaint property, a suit for a declaration of the kind would not lie, inasmuch as the deed of hypothecation fixes a date for the repayment of the debt and the suit is brought before the expiry of such term.

Held also that a Court cannot exercise its discretionary powers of granting mere declaratory decrees in cases of this kind.

Krishnan vs. *Raman and another.* 7. T. L. R., 12.

3.—*Suit by mortgagee to set aside attachment by third party.*

Where mortgaged property is attached by a third party, the mortgagee may sue to have the attachment cancelled, even before his possession is disturbed under court-process. *Govindan* vs. *Madamuthu.* 9. T. L. R., 210.

4.—*Conversion of hypothecation into mortgage—Recovery of money or possession of property.*

Suit to recover money due under a hypothecation deed which conferred on the creditor the right to enter upon, and take possession of, the hypotheca on the debtor's defaulting to pay interest at the stipulated periods; or to recover possession of the property, on the ground that the defendant has defaulted to pay interest subsequent to 1063.

Held that the transaction, though originally a hypothecation, became converted into a mortgage with possession on defendant's defaulting to pay interest.

That such conversion is not illegal.

That the plaintiff's claim for money is barred, as no term for repayment is fixed in the bond, and 12 years have elapsed from the date thereof:

And the claim for possession of the property is not barred, as

the cause of action therefor accrued only in 1064, when default was committed in the payment of interest. *Mariady* vs. *Renga Row.*
10. T. L. R., 147.

9. JURISDICTION.

1.—*Breach of Contract.*

A suit founded on a breach of contract may be brought in any of the three following Courts:

(*a*). The Court within whose jurisdiction the contract was made,

(*b*). The Court within whose jurisdiction the breach of such contract took place. And

(*c*). The Court within whose jurisdiction the defendant resides. *Narayana Aiyan* vs. *Suppan.* 1. T. L. R., 96.

2.—*Accrual of—promissory note.*

A residing at Quilon executed to B carrying on business at Alleppy a pro-note which specified no place of payment.

B endorsed the pronote to C who sued in the Alleppy Zillah Court for recovery of the money. A objects to the jurisdiction of the Alleppy Zillah Court and pleads discharge to B.

Held that in the absence of any mention of a specific place for payment, the reasonable inference would be that the payment should be made where the holder of the note permanently resides or carries on business; that where there is no express covenant the presumption of law is that the obligor is bound to seek the obligee and tender the money at the residence or place of business of the latter; and that, consequently, the cause of action must be taken to have arisen within the jurisdiction of the Alleppy Zillah Court, and the objection as to jurisdiction is unsustainable.

Held also that a promissory note is a negotiable instrument wherein the property could be transferred by indorsement and delivery thereof; and that therefore the plea of discharge cannot affect C's claim as against A.

Velayudhan vs. *Ramaswamy Aiyan.* 11. T. L. R., 184.

10. LIMITATION.

1.—*Day on which cause of action arose excluded—fractions of a day.*

In calculating limitation, the day on which the cause of action arose is excluded, as the law does not take notice of fractions of a day. *Raman* vs. *Raman.* 1. T. L. R., 76.

2.—*Otti and Kulikkanom Mortgages.*

In cases of Otti and Kulikkanom mortgages, the cause of action arises only 12 years after the date of mortgage and the period of limitation (50 years) must be calculated from that time.
1. T. L. R., 52.

3.—*Tree sold as timber without express period for delivery.*

Held that a tree sold as timber must be treated as moveable property; and, therefore, the limitation applicable to the case is 3 years under Art. 36 of the Regulation.

Held also that as no express period was fixed for delivery of the timber, the cause of action should be taken as arising only after the lapse of a reasonable time. *Alvancherry Thamprakkal* vs. *Sankaran.*
9. T. L. R., 143.

11. RES JUDICATA.

See cases under "Res-judicata—causes of action."

12. RESTITUTION OF WIFE.

Cause of action as against persons merely sheltering wife.

Held that a husband seeking for restitution of an adult wife, has no cause of action against persons who are alleged to merely shelter her but not to restrain her actions. *Abdulkadir* vs. *Pathummal.*
11. T. L. R., 163.

CAVEAT EPMTOR.

Applicability of the maxim to the case of a sale brought about by active fraud on the vendor's part.

Held that a contract of sale brought about by active concealment and fraud on the part of the vendors, is voidable at the opotion of the purchaser.

Held further that, in such cases, where the relief is sought on the ground of fraud, the maxim "Caveat Emptor" does not apply, and the purchaser is entitled to recover the purchase money paid by him. *Geevergese* vs. *Abraham.*
11. T. L. R., 84.

CHARACTER—*Previous.*

No evidence ought to be taken regarding the previous bad character of the accused unless they chose to call evidence regarding their good character. 1. T. L. R., App. 2.

CHARGE.

1.—*Error in; acquittal; discharge.*

Held in the circumstances of the case, that the error in the charge affected the jurisdiction. Magistrates are required to

CHARGE—(*Concluded*).

specify the Section under which they act when they direct the (விடுதல்) release of the prisoners. 11. T. L. R., App. 4.

2.—*Defect of—Sufficiency of, or otherwise, to invalidate a conviction.*

Held also that the defect to specify the nature of the property embezzled with sufficient accuracy, is not one that can be held fatal to the validity of a conviction, unless it has prejudiced the accused in his defence.

Sirkar vs. *Govindaswamy Moodeliar.* 11. T. L. R., 57.

CHARITABLE INSTITUTION.

1.—*Claim against—Presumption* regarding *manager* or *trustee.*

Held that the position of the manager or trustee of a charitable institution is analogous to that of a guardian of a minor; that his acts bind the institution only when it is clearly shown that he acted under proper necessity and in the best interests of the institution; that a creditor who lends money on the credit of the institution, must satisfy himself as to the real necessity for the loan, and prove to the satisfaction of the Court that he really made the loan; and that no weight can legally be attached to the recital of consideration made in a trustee's or manager's bond, for the simple reason that it is not, strictly and correctly speaking, a statement against his own interest.

Held further, that the presumption of truth which arises from a party's own statement against his interest, cannot be made in the case of a manager's or trustee's statements, which affect the institution under his control, but do not affect him. *Mamokkar* vs. *Abdalkadir.* 10. T. L. R., 19.

2.—*Suit on behalf of—Representation of community—non-joinder of parties—Power of court under the old Procedure Code to cure defect of parties—Sec.* 26 *of the new C. P. C.* (*Regulation* II of 1065).

Suit on behalf of a Charitable Institution whose management is vested in a particular community of a particular locality, to set aside certain alienations of properties appertaining to the said Institution, made by the cash-keeper thereof (defendant in the suit). The suit is preferred by the Gramanies who hold a Power of Attorney which authorizes them to represent 83 out of 200 members of the community.

Held that as the defendant holds his office by virtue of his appointment thereto by the whole community, the suit as against him started under the minority of a community, is bad for non-joinder of the necessary parties.

That in a suit of the kind all the members of the community should be made parties to the proceedings, either as plaintiffs or defendants : That the fact of the Gramanies who are the supervising and controlling authority of the Institution, being themselves members of the community, cannot cure the defect of party in the suit.

That in a suit filed under the old Civil Procedure Code, the Courts have not the power conferred on them by S. 26. of the new Code (Regulation II of 1065) to permit one or more of the parties interested in a suit to prosecute or defend it on behalf of all similarly interested. *Kylasanatha Aiyan* vs. *Harihara Aiyan.*

11. T. L. R., 23.

3.—*Trust property—Inalienability of, for trustee's private purposes—attachment of property for trustee's private debt—effect of trust property being treated as private property.*

Held that an attachment of property forming a charitable endowment, for satisfaction of a private decree-debt against the trustee charged on the property, was invalid.

Held further that the fact that the property has been treated as the trustee's private property, cannot alter its nature and render it alienable for private purposes of the trustees. *Sooranammal* vs. *Narasimha Aiyan.* 11. T. L. R., 190.

CHEATING.

See Penal Code S. 419.

CHEKKALAR—*Customary law,—inheritance—Daughters—receipt of Stridhanam—marriage with Avakasam in the husband's property—effect of.*

Held, on the evidence in the case,

That according to the customary law of inheritance obtaining amongst Chekkalars, the daughters are co-heirs with sons to ancestral property.

And that the receipt of Stridhanam and marriage with Avakasam in the husband's properties, would not disentitle a female of the Chekkalar caste from claiming her share in ancestral property.

Thuppandi vs. *Parvati.* 11. T. L. R., 80.

CHITTY.

1.—*Subscriber's default—cause of action.*

Held that a defaulting subscriber to a Chitty, has a right of action for his share of the contribution as soon as the Chitty Conductor himself allows the scheme to fall through. *Kumaran* vs. *Kulathoor Aiyan.* 1. T. L. R., 64

CHITTY.—(*Continued*)

2.—*Limitation.*

The Limitation Regulation does not run against a Chitty manager who waives his right to enforce a penal clause in a Chitty scheme, whereby on failure of payment of an instalment the defaulting member was declared liable to make good the whole amount.
Krishna Aiyar vs. *Parameswaran.* 2. T. L. R., 29.

3—*Right of assignment of security bond by foreman.*

The foreman of a Chitty transaction has no right to make an assignment of a security bond executed on his behalf by a prized subcriber to the Chitty, unless such assignment is assented to by all the subscribers. *Kunjoo* vs. *Nataraja Ayan.* 3. T. L. R., 131.

4—*Assignment of security bond.*

A is the conductor of a Chitty to which B (among others) is a subscriber. At the 3rd drawing of the lots, the prize falls to B. B executes a security bond to A, binding himself to pay the future instalments regularly, and draws the amount. In the interim, C obtains a money-decree against A (the Conductor of the Chitty) and attaches and sells, and purchases himself, the security bond executed to A by B and brings a suit against B to recover the amount due under the security bond, B having defaulted to pay the instalments as agreed. In determining, therefore, the question whether the transfer of such a bond to C by virtue of the court-auction is absolutely void or whether it is simply voidable, it was held that it is only voidable. (Full Bench). *Thommanathen*, vs. *Marthandan,* 5. T. L. R., 38.

5.—*Liability of Conductor for default.*

The suit was by a Chitty subscriber to recover the amount of contribution paid by him on the ground that the Conductors had defaulted.

The Conductor, while admitting that the Chitty had fallen through, contended that it was not due to their default but to that of the subscribers to pay regularly.

Held that the failure on the part of the other subscribers cannot be visited upon the plaintiff who had nothing to do with them.
Kumaran vs. *Chithambarathanoo.* 5. T. L. R., 88.

6.—*Cause of action—Limitation.*

In the absence of an express stipulation to the contrary, a defaulting subscriber's right to recover back his contribution from the foreman, arises on the expiry of the term stipulated for the completion of the Chitty, in case the scheme continues in spite of the default of the subscriber; but where the scheme falls through

owing to the default of the foreman himself, the subscriber acquires a right to claim back his contribution at once; and a suit to recover the contributions to a Chitty by a subscriber more than 3 years after the date of the default on the part of the foreman is clearly barred. *Kochupillai.* vs. *Neelakandan.* 6. T. L. R., 98.

7.—*Agreement executed by a prized subscriber to pay future instalments—cause of action—Limitation Regulation, Art.* 60.

Suit to recover, *inter alia,* subscriptions due by a prized subscriber of a Chitty—the late Karanaven of defendant. On the evidence, it is found that the defendant's Karanaven had executed an agreement which provided that the subscriptions due at the subsequent drawings should be paid according to the Chitty rules (*i. e.*, annually), interest amounting to one-fourth of the principal due being payable in addition, in case of default of payment of any instalment at the next drawing, and the whole balance with interest equal to one-half the principal, at the third drawing.

The agreement was executed in 1060, and the suit filed in 1064. The Munsiff and the Zillah Judge held the suit barred with respect to the claim aforesaid, on the ground that more than 3 years had elapsed from the date of the agreement.

Held that the agreement of 1060 is equivalent to a bond falling under Art. 60 of the Limitation Regulation. That, under the said article, no demand in writing having been made by the plaintiff, the period of limitation should be calculated from the expiration of the first term of payment, as to the part then payable, and for the other parts, from the expiration of the respective terms of payment.

And that, therefore, the claim for the subscriptions due for the years 1061, 1062 and 1063 is not barred. *Govindan* vs. *Keshavan.* 10. T. L. R., 49.

8.—*Suit by subscriber for recovery of Chitty money—applicability or otherwise of Section* 10 *and Art.* 79 *of the Limitation Regulation—Chitty money in the hands of Conductor—whether regardable as trust property.*

Held that payment of money as Chitty subscription being under a contract, such money cannot be treated as trust property, and that Section 10 of the Limitation Regulation which governs suits for recovery of specific property left in trust, or property into which it has been converted, cannot be applied to suits for recovery thereof.

Held also that Art. 79 of the Limitation Regulation does not

CHITTY.—(*Concluded*).

apply to suits for recovery of Chitty money remaining in the hands of the Conductor.

Held further that suits by Chitty subscribers must be brought within 3 years of the date of failure to subscribe by the plaintiff, or within 3 years of the closing of the Chitty. *Moondan* vs. *Mahomed.* 11. T. L. R., 158.

9.—*Assignment of security—Recovery under supersession of valid by invalid title—estoppel—Res-Judicata—Limitation Art.* 109—*unregistered letter—admissibility of, in evidence.*

Plaintiff, the foreman of a Chitty scheme to which 2nd defendant, a junior member of his Tarawad, the 1st defendant being the Karanavan thereof, was a subscriber, obtained a hypothecation of the Tarawad properties on 2nd defendant's drawing his prize-amount, for the due payment of future instalments. Subsequently plaintiff assigned his rights under the hypothecation to a third party who sued for the recovery of the subscriptions which 2nd defendant had allowed to fall into arrears. That suit having been dismissed in appeal by the High Court, on the ground of want of consideration for the assignment, the present suit is brought by the plaintiff to recover the money due to him under the deed of hypothecation as a charge upon the immoveable property covered thereby. Defence is (1) that plaintiff's rights have been extinguished by the assignment executed by him to a third party in the former suit, (2) that the claim is *res-judicata* by the former judgment, and (3) the plaintiff is barred by the statute of limitation.

Held that a valid title cannot be destroyed or cancelled by an invalid transaction. That the defendants who in the former suit questioned the validity of the assignment, cannot now be allowed to set up the assignment as a valid transaction, operating to extinguish pliantiff's rights as the creditor of defendants.

That the plea of *res-judicata* does not apply, as the plaintiff in the present suit does not claim through the plaintiff in the previous suit.

And that the plaintiff's claim is governed by Art. 109 of the Limitation Regulation which prescribes a period of twelve years for suits to recover money due under a hypothecation of immoveable property.

Held also that a letter produced to show that the 2nd defendant acted on behalf of the Tarawad, and the debt was, therefore, chargeable thereon, though unregistered, is admissible in evidence. *Marthandan* vs. *Mathevan.* 12. T. L. R., 151.

CHOSE IN ACTION.

1.—*Saleability of.*

A sale of property which may become the subject of litigation cannot be held invalid on that account, such property being a fit subject for contract. *Ponkathan* vs. *Narayanaperumal.*

9. T. L. R., 179.

2.—*Enforcement of, by pledgee or hyphothecatee of—court-sale held subsequent to hypothecation—effect of.*

Held that a pledgee or hypothecatee of a chose in action (in the present case, Chitty money outstanding in the hands of the Chitty Conductor) cannot call upon the pledgor's debtor to directly pay the debt to him (pledgee), unless he has obtained an assignment of the pledgor's rights by a judicial or private sale.

Held also that a court-sale of property held while there was a valid hypothecation subsisting thereon, would be subject to the lien created by such hypothecation. *Sankaranarayana Aiyan* vs. *Kathija Ummal.* 11. T. L. R., 67.

CHRISTIANS.

1.—The essentials of the contract of marriage among Christians is substantially the same everywhere, and by marriage must be understood the voluntary union for life of one man and one woman to the exclusion of all others. Marriage is something more than a mere contract. It involves a complete change of status and cannot be modified according to the pleasure of the parties. For the contract of Christian marriage, the free and reasonable consent of the parties is indispensable.

Where, therefore, a boy of seven was said to have contracted with a girl of six (the parties being Syrian Christians) and it was not proved that the so-called marriage was subsequently validated, it was held that such marriage was not binding and that, therefore, the subsequent marriage of one of them with a third party did not amount to the offence punishable under Sec. 494 of the Penal Code. (*Hyde* vs. *Hyde followed*).

Sirkar vs. *Mammen.* 2. T. L. R., 89.

2.—*Native Christians—Protestant Hindu converts. Mothers and wife's rights to share in son's and husband's property—maintenance—British Indian Succession Act—whether applicable in Travancore.*

The question having arisen whether a Christian (Protestant) woman descended of a Hindu convert family, could claim a share in property left by her son and husband, both deceased, the former also leaving issue.

Held on the evidence in the case

That under the customary law of the parties in the case, the mother or widow is entitled only to maintenance, when the son or husband leaves male issue behind.

Held further that the provisions of the British Indian Succession Act cannot be applied to the parties, as that Act has not been recognized as law by the legislature of the State. *Elia* vs. *Daniel.*
11. T. L. R., 150.

3.—*Native Christians—Hindu Law—Gift to first wife—Husband's right to resume possession of. Devolution of the property—assignment by the donee—validity of.*

Suit in respect of property absolutely settled by a native Christian following the Hindu Law, upon his first wife.

Held that under Hindu Law by which the parties are governed, property given by the husband to his wife after marriage, devolves upon her children after her death, and cannot be resumed by the husband in the event of his surviving her.

An assignment of the property in suit to the donee's son-in-law, with the assent of the daughter (her sole direct heir) was held valid as against the donor's second wife and her children.

Marial. vs. *Massilamani.* 11. T. L. R., 122.

4.—*Protestants—Nullity of marriage—Jurisdiction—misrepresentation and fraud—Principal and agent—Limitation—Delay and negligence—Evidence—Medical opinion.*

The plaintiff, a member of the Church of England, sued for a decree annulling his marriage with the 1st defendant, on the ground that he was induced to marry the said defendant, who was insane by the misrepresentation and fraud of the 2nd defendant, the plaintiff's uncle.

Held (1) that marriage between persons professing the religion of the parties was essentially a civil contract and the Courts of Travancore had jurisdiction to try suits relating to the validity of such marriages.

(2) That a contract of marriage was unlike other contracts, and the courts should be guided by the Canon Law and the Principles laid down by the English Courts, not based on Statutory law which was not in force in the State, in adjudicating on it.

(3) that the plaintiff must show that the fraud practised on him deprived him of the power of exercising his free-will.

(4) that there was no authority for holding that the misrepresentation or fraud of an agent would bind the principal in a marriage contract.

CHRISTIANS—*Concluded.*

Held also (*a*) that Art. 78 of the Limitation Regulation was governed by S. 18 of the Regulation, and the plaintiff should show that he was, by means of fraud, kept from learning of the deception practised on him.

(*b*) that a delay of nine years in seeking relief would be sufficient to bar a suit of this nature on equitable grounds.

(*c*) That the written opinions of medical gentlemen given and statements submitted to them by the plaintiff were inadmissible as evidence against the defendants. *Poonen* vs. *Maria.* 10. T. L. R., 95.

CHUCKRAMS——*Dishonest possession of. See Penal Code S.* 243.

CHURCH.

—*Religious endowment—Materials used in religious worship —Sale of church property—Bishop's power to sanction sale of. Transfer of spiritual administration of Church—Consent of trustees and congregation.*

Suit by representatives of one church for recovery of another church and its premises together with the articles used at Divine worship therein. Plaintiff's claim rests on a purchase from the members of a family who are alleged to have taken a prominent part in building and endowing the church sold.

Held that the materials used in religious worship are, by all systems of law,

" *Extra Commercium.*"

That a religious endowment whether Hindu, Christian or Mahomedan is inalienable.

Held also that the fact that a party granted a site and contributed largely towards the building of a church, will not, in the absence of an express agreement or understanding, confer on his family any special right or interest in the church or its endowments.

Held further that a Bishop is not empowered by law to sanction the transfer or sale of a church and its endowments independently of the Kykars and congregation. *Francho Kathanar* vs. *Mani Kathanar.* 10. T. L. R., 12.

CIRCUIT—*Notice (written) to be given to parties when Magistrates go on Circuit.*

When Magistrates go on circuit or, for other reasons, are absent from their head quarters, special notice should be given to parties concerned in the cases pending before such Magistrates, of the place and time at which their cases will be proceeded with. The

CIRCUIT—*Continued.*

notice should be in writing, and in all cases sufficient time should be allowed for such parties to appear.

Criminal Circular No. 18 *of* 1060. 4. T. L. R., App. 6.

CIVIL PROCEDURE CODE.

SECTION 2.

1.—*Order returning plaint.*

Held that under the present Code of Travancore the order returning a plaint, for presentation to another Court, must be taken to be a decree for the purpose of an appeal against it. *Srinivasa Chariar* vs. *Ramaswamy Reddiar.* 5. T. L. R., App. 11.

2.—*Whether an order under S.* 227 *is a decree.*

Held that an order passed in an enquiry held under S. 227 of the Civil Procedure Code falls under clause (b) of S. 238, and thus is a decree under S. 2 of the Code and that, therefore, a suit to set aside an order passed in execution proceedings making the representatives of a deceased judgment-debtor liable to a decree passed against the debtor personally, on the ground of assets belonging to the estate of the deceased is not maintainable. *Narayanan Namburi* vs. *Sankaran.* 11. T. L. R., 4.

3.—*Rival decree-holders—order as between—whether appealable-aggrieved party's remedy.*

Where money realized in execution of one decree was ordered to be paid to the holder of another decree;

Held that the order is one as between rival decree-holders and does not fall under Section 238 of the Civil Procedure Code; that such an order does not fall within the term "decree" as defined by the Code; that no appeal or special appeal lies against such an order and that the remedy of the party aggrieved thereby, is a suit for refund of the money wrongly paid, under Section 292 of the Civil Procedure Code. *Vappumeeran* vs. *Abdalkadir.*

11. T. L R., 161.

SECTION 7.

1.—*Rights to offices. Held, inter alia,* that Rights to offices are real property under the Hindu Law and as such, suits in respect of them are cognizable by Civil Courts. *Cunju* vs. *Krishnen.*.

3. T. L. R., 56.

2.—*Jurisdiction—Kandukrishy land.* Under Civil Procedure Code (Section 7), Civil Courts have jurisdiction to try suits relating to Kandukrishy lands. *Govindan* vs. *Sirkar.*

9. T, L. R., 142.

(But see Section 7 A newly introduced).

3.—*Viruthi lands—Jurisdiction.* Held by a FULL BENCH that, under the Royal Proclamation, dated 4th Idavom 1061, Civil Courts have no jurisdiction to try suits relating to *Viruthi* lands whether alienated or unalienated. *Neelacandan* vs. *Peruman.*

9. T. L. R., 169.

4.—*Viruthi lands—jurisdiction—Scope of the Full Bench Ruling in Neelacandan* vs. *Peruman.* The Full Bench Ruling in *Neelacandan* vs. *Peruman* (reported at 9. T. L. R., 169), that "under the Royal Proclamation, dated 4th Idavom 1061, Civil Courts have no jurisdiction to try suits relating to Viruthi lands, whether alienated or unalienated," applies only to such (Viruthi) lands as have been granted and settled under para 6 of the said Royal Proclamation, and not to those remaining unsettled. *Kunjan* vs. *Raman.*

10. T. L. R., 60.

5.—*Viruthi or Inam lands—sale of—hypothecation debt—satisfaction of—Jurisdiction.*

A seeks the reversal of the decree of the Lower Court which disallowed his claim to sell *Viruthi* lands in satisfaction of a hypothecation debt due to him by B (1st defendant). The lands are admittedly Viruthi or Inam lands held by 1st defendant under the Sirkar, and the Judge below has, upon that ground, declined to pass a decree against them. It is contended for the appellant, that the Viruthi lands not settled under the terms of a recent Proclamation on the subject, being under the Jurisdiction of the Ordinary Civil Courts, they may properly be the subject of a private or public sale as any other species of lands.

Held that the question of Jurisdiction over, and the question of alienability of, Viruthi or Inam lands have to be decided on different principles; and that such lands being held by defendant (B) on the condition of his rendering certain services to Government have been treated by immemorial usage as inalienable. *Pathoo* vs. *Iythravus.* 12. T. L. R., 190.

SECTION 9—*Res-Judicata.*

SEE CASES UNDER "RES-JUDICATA."

SECTION 15.

—*Recognized agent—prosecution of suit by allowance of time to implead principal.*

Held, inter alia, that a recognized agent coming under Clause 2 of Section 15, cannot prosecute a suit in his own name, though after making his principal formally a party to the suit, he may

conduct it as a recognized agent, and that a defect of party of the kind cannot justify the dismissal of the suit, the fair procedure being to allow a reasonable time to make the principal a party. *Makoji* vs. *Kulathoor Aiyan.* 8. T. L. R., 30.

SECTIONS 22, 209, & 210.

——*Suit for dissolution of partnership—joinder of parties—Preliminary order—Final decree—Execution of final decree.*

Held that a suit brought jointly by some of the partners of a firm, for settlement of accounts and distribution of assets, is not bad for misjoinder, as Section 22 of the Civil Procedure Code authorizes the joinder of all persons as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action :

That in such a suit, all the partners are necessary parties, either as plaintiffs or defendants, those in possession of partnership assets and who are bound to render accounts occupying the position of plaintiffs, and the others, that of defendants.

That under Sections 209 and 210 of the Civil Procedure Code, a preliminary order should be passed in such suits, to take accounts, and if, on taking such accounts, it is found that the receipts of plaintiff exceed what is due to him in respect of his advances and profits, the final decree should direct him to refund to the defendant the excess he (plaintiff) has drawn : And that such final decree determining the rights and liabilities of all the partners, will be capable of execution at the instance of any partner (whether plaintiff or defendant) to whom money may be due. *Jagreya Sait* vs. *Velayudhan.* 11. T. L. R., 48.

SECTION 26.

1.—*Suit on behalf of a community—non-joinder of parties—Power of Court under the old Procedure Code to cure defect of parties.*

Suit on behalf of a charitable institution whose management is vested in a particular community of a particular locality, to set aside certain alienations of property appertaining to the said Institution, made by the cashkeeper thereof (defendant in the suit). The suit is preferred by the Gramanies who hold a power of attorney which authorizes them to represent 83 out of 200 members of the community.

Held that as the defendant holds his office by virtue of his appointment thereto by the whole community, the suit as against him started under the authority of a minority of the community,

is bad for non-joinder of the necessary parties. That in a suit of the kind, all the members of the community should be made parties to the proceedings, either as plaintiffs or defendants:

That the fact of the Gramanies who are the supervising and controlling authority of the Institution, being themselves members of the community, cannot cure the defect of party in the suit. That in a suit filed under the old Civil Procedure Code, the courts have not the power conferred on them by Section 26 of the new Code (Regulation II of 1065) to permit one or more of the parties interested in a suit to prosecute or defend it on behalf of all similarly interested. *Kylasanatha Aiyan* vs. *Harihara Aiyan.*

11. T. L. R., 23.

2.—*Inapplicability of, to Marumakkathayom Tarawads.*

Held, inter alia, that Sec. 26 of the Civil Procedure Code has no application to cases of Malabar Tarawads. *Govindan* vs. *Govindan.* 11. T. L. R., 112.

3.—*Suit on behalf of Samuham—Representation of the Samuham.*

Plaintiffs, who are appointed Kizhi and Pattola respectively of a Samuham by the president of its Managing Committee, without consulting any members thereof, sued to recover a sum of money due to the Samuham under a bond. The contention of defendants is that the plaintiffs were incompetent to sue on behalf of the Samuham.

Held that the Kizhi and Pattola being only servants of the institution, cannot be accepted as its legal representatives authorized to sue under S. 415 C. P. C., unless expressly constituted such by the members. The Kizhi and Pattola being themselves members of the Samuham, may sue on its behalf, but subject to the provisions of S. 26. In such case, the Court of first instance should give notice to all the members of the Samuham before trying the suit. 12. T. L. R., 145.

SECTION 28. (*Reg. II of* 1037, *S.* 63).

1.—*Joinder of party—entry in diary and register.* When any one is made a party, an entry as to his name and position should be made in the Register and Diary.

Civil Circular No. 4 *of* 1057. 1. T. L. R., 50.

2.—*Party—admission of.*

When any person is made a party to a suit or proceeding either on his own application or otherwise, the name of such person and his position in the suit must be entered in the plaint or the princi-

pal application as the case may be, in red ink, also in the decree or final order and in the register of suits and diary. None should appear as a party on the record of any suit or proceeding, unless the court has passed a formal order, admitting him as such.

Civil Circular No. 2 *of* 1061. 4. T. L. R., App. 7.

3.—

——*Liability of partner in joint trade—assignor and assignee—Personal decree.* A executes a bond to B for a certain sum of money. B assigns over this bond to C. C sues A alone for recovery of the amount with interest under the deed of assignment. At the request of A who avers that the bond was executed by him for the price of goods purchased for the purpose of a joint trade carried on by him and D, the latter was added by the court as 2nd defendant. D denies A's allegation of joint trade and his liability for the debt. The Zillah Court holds both A and D jointly liable—

Held that the suit being simply for money due to C, under the express terms of a bond executed by A, D cannot, by any stretch of language, be said to be a person "entitled to, or claiming some share or interest in the subject matter of the suit," nor is he a person likely to be affected by the result within the meaning of S. 61 of the (old) Civil Procedure Code.

Held also that a personal decree for money against A can, in no way affect D (A's partner in trade) even supposing such partnership to exist. *Kochukunju* vs. *Narayana Aiyan.* 7. T. L. R., 8.

4.—*Intervenor—admission of as party.*

The suit is to recover money due under a hypothecation bond, by sale of the interest of 1st and 2nd defendants in the hypothecated property. Defendants 3 to 5 were made parties on their own application as they claimed portions of the hypothecated property under titles adverse to 1st and 2nd defendants. The question having arisen in appeal by the 5th defendant as to whether, in the circumstances of the case, his admission as a party was right.

Held (Kunhiraman Nair, J., dissenting) that Section 63 of the (old) Code of Civil Procedure clearly requires the person who has any right to the property in dispute in a pending suit, to be made a party to such suit to enable him to protect his interests, and that, therefore, the appellant (5th defendant) was entitled to be joined as a party. *Krishnen* vs. *Ramakrishna Aiyan.* 9. T. L. R., 60.

5.—*Addition of party as plaintiff when objected to.*

It is only in cases in which the rights of intervenors to bring the suit are not disputed that they can be made plaintiffs. The pro-

per course when such right is disputed, is to make them defendants. 9. T. L. R., App. 45.

SECTIONS 28 and 557.

—*Refusing to add party or to transfer defendant to array of plaintiffs—whether appealable.*

The Civil Procedure Regulation does not provide for an appeal against an order refusing to add a party to a suit either as plaintiff or defendant or to transfer a defendant from the array of defendants to that of plaintiffs. 9. T. L. R., App. 46.

SECTION 30.

—*Misjoinder.*

Held that all formal objections to a suit such as misjoinder, &c., ought to be taken before the settlement of issues. The assignor being liable to account to the assignee, on the failure of the claim founded upon the assignment, his inclusion as co-defendant is not bad for misjoinder. The modern tendency of decision and legislation is to discourage pleas of misjoinder—*George* vs. *Unnirevi.*

3. T. L. R., 16.

SECTIONS 31, 32, & 551. (Reg. II of 1037. Section 104).

—*Party or person competent to file an appeal—Defect of parties in appeal.*

Held that though Section 104 of the Civil Procedure Code (old) allows one or more plaintiffs to appear and act for the other or others of them, the presentation of an appeal by one or more of several appellants for the other or others of them is wholly unsanctioned by law. An appeal must be filed in person or by vakil or by a recognized agent under the provisions of the Code.

Held also that an appeal filed by a party improperly added as such and who has not signed the plaint, is bad for defect of parties. *Saval Amedu Labba* vs. *Regunatha Row.*

SECTION 39. 7. T. L. R., 165.

——*Relinquishment of part of claim by plaintiff—jurisdiction.*

Held that under Section 39 of the Civil Procedure Code, a plaintiff may relinquish any portion of his claim, in order to bring his suit within the jurisdiction of any Court. *Nagur Meeral* vs. *Meera Ravathar.* 9. T. L. R., 174.

SECTION 41. (Reg. II of 1037. Section 7).

——*Several causes of action—Jurisdiction.*

Held that where several causes of action are joined together,

CIVIL PROCEDURE CODE—*Continued.*

each of which is within the jurisdiction of a Munsiff's Court, but the entire claim exceeds its jurisdiction, the Zillah Court is not incompetent to try such suit. *Narayanan* vs. *Sivaramakrishna Aiyan.* 3. T. L. R., 31.

SECTION 49.

——Whenever a plaint is rejected, a judicial order is to be recorded in the diary of the Court and the original plaint is also to be placed among the records, but not to be numbered or entered in the register.

2. Whenever a plaint is returned, the grounds and date of return are to be entered on the back of such plaint, and signed by the Judge, a copy of such endorsement being placed on record.

3. Where a plaint is returned for amendment the order of return should specify a time for such amendment. *Civil Circular No. I of* 1057. 1. T. L. R., 48.

SECTION 53. (*Reg. II of 1037. Section 27*).

——Where in a suit filed, it is found in the course of the trial that the suit is beyond the jurisdiction of the Court and there is no reason to question the *bona-fides* of the plaintiff, the plaint ought to be returned to the plaintiff to be filed in the proper Court giving him credit for the fee already paid. *Krishnar* vs. *Chakrapani Ayengar.* 1. T. L. R., 61.

SECTIONS 95, 103 & 104 (*Reg. II of* 1037. *Sections* 100 & 108).

——*Ex-parte decision—appeal.* The default of a defendant to appear on the day to which the hearing of a case is adjourned, falls under Section 100 of the (old) Civil Procedure Code in the same way as his default to appear on the day named in the original summons.

No appeal under S. 108 of the (old) Civil Procedure Code, therefore, lies by a defendant who was treated as *ex-parte* by a court under such circumstances. *Kesava Menon* vs. *Vasu Nampiyar.*

3. T. L. R., 22.

SECTIONS 97, 103, 104, 529 *and* 553 (*Reg. II of* 1037, *SS.* 108, 331 *and* 336).

——*Special appeal from ex-parte decision.*

A special appeal lies from a decision passed *ex-parte* against a respondent in Regular appeal. *Krishna Aiyan* vs. *Parameswaren.*

2. T. L. R., 29.

CIVIL PROCEDURE CODE—*Continued.*

SECTIONS 94 and 584.

SEE CASES UNDER S. 584, C. P. C. 8. T. L. R., App. 40.

SECTION 103.

1.—*Want of notice of adjournment—ex-parte decree.*

Held that as it was difficult to say whether the defendant had notice of the adjournment or not, the benefit of the doubt is given him and the *ex-parte* judgment against him set aside. 1. T. L. R., 30.

2.—*Ex-parte decree—remedy in respect of suit for recovery of property sold in execution of decree—Maintainability of, in the absence of prayer to cancel decree. Cancelment of Court sale—Procedure to be followed by party to the proceedings.*

Certain immoveable property belonging to the plantiff was sold in execution of an *ex-parte* decree obtained against him. It is alleged that he had no notice of the suit, nor of the attachment and sale, and that the *ex-parte* decree and execution proceedings were fraudulent. He sues to recover the property so sold, but does not seek for any relief as regards the decree.

Held that the omission to seek for cancellation of the decree is fatal to the relief sought for, and that the validity of the decree cannot, in the circumstances of the case, be considered even incidentally.

Held also that the remedy for a party injured by an *ex-parte* decree, is by an application to the court that passed it, to set it aside, and not by a fresh litigation. The expiry of the period allowed for making such an application, will not warrant the institution of a regular suit.

Held further that the Civil Procedure Code prohibits the institution of a regular suit to set aside a sale held in execution of a decree, by a party to the proceedings, on the ground of irregularity. *Varki* vs. *Kumaran.* 10. T. L. R., 4

SECTION 141.

——No pleading is to be registered unless the Judge has examined the same with reference to Sections 26 and 31 of the Code and has ordered that it should be brought on the file.

The particular attention of the Courts is drawn to Section 26 to see that pleadings are not unnecessarily prolix, or in argumentative form. The causes of action and the matters of defence should be stated as concisely as possible. *Civil Circular No. I of* 1057.

1. T. L. R., 48.

See 142 - 18 R. 111

CIVIL PROCEDURE CODE—*Continued.*

SECTION 153. (*Regulation II of* 1037, *Section* 135.)

1.—*Re-admission.*

Held that where a case is disposed of under Section 135 of the (old) Civil Procedure Code, it cannot be re-admitted as having been heard *ex-parte*. *Perumal Pillai* vs. *Padmanabhan.*

1. T. L. R., 50.

2.—*Decision on record on party's default to produce proofs or witnesses (Section* 135. *Regulation II of* 1037)—*res-judicata.*

Held that a decision on the record under Section 135 of the Civil Procedure Regulation II of 1037 has all the legal effects of an adjudication on the merits for purposes of *res-judicata.*
Keshavan vs. *Krishnan.* 12. T. L. R., 194.

SECTION 154. (*Regulation II of* 1037, *Section* 148.)

Held that to obtain a summons for a party to a Civil suit as a witness, it is necessary for the party applying for such summons to satisfy the Court that there are "sufficient grounds in support of such application." *Muthali* vs. *Avutherukuman.* 2. T. L. R., 6.

SECTION 171.—*Summons for personal appearance.*

Held that the requisition to put in personal appearance to a person residing at a distance of more than 50 miles from the place where the Court is held and beyond the limits of the Court's Jurisdiction is not legal. *Easwaran Nampuri* vs. *Narayana Iyen.*

3. T. L. R., 19.

SECTION 172 (*Reg. II of* 1037, *S.* 156).

1.—*Default of co-defendant to appear as witness.*

The default of a co-defendant to appear as a witness is no valid ground for giving a decree against the others and the power of the Court to pass Judgment against a defaulting party under S. 156 of the Civil Procedure Code, could not be exercised except on the day on which the default occurred. *Narayanan Nambiathiri* vs. *Srinivasan.*

3. T. L. R., 5.

2.—The provisions of this section apply only to cases of contumacious refusal by party to appear in obedience to the order of the Court. *Eswaran Nampuri* vs. *Narayana Iyen.* 3. T. L. R., 19.

SECTION 172 (*Reg. II of* 1037, *S.* 156).

3.—*Witness—default of appearance without lawful excuse—service of written notice—adjournment of hearing—verbal order.*

A, the plaintiff, being summoned by the Court to appear as a

witness for B—the defendant, defaults to appear without lawful excuse. The Court, therefore, dismisses A's suit.

Held that in the absence of a written notice to plaintiff requiring his attendance on any of the adjourned hearing days, a Court is not justified in visiting a party with the extreme penalty provided by S. 156 C. P. C., a penalty which is intended to meet only cases of contumacious refusal to obey the orders of the Court.

Held also that a verbal order to a vakil to produce his client does not satisfy the requirements of the law. *Padmanaban* vs. *Narayan.* 7. T. L. R., 14.

SECTION 175. *Defendant's right to have full opportunity to prove his case.*

Held that the possibility of the defence turning out to be false, is no ground for refusing a fair trial to a defendant who is entitled to full opportunity to prove the defence by any admissible evidence. *Valli* vs. *Sivanandi Paniken.* 5. T. L. R., 76.

SECTION 204.

1.—*Award of subsequent interest on judgment debt—Rate of interest.*

Held that a court that has to execute a decree ought to award interest on the Judgment-debt, though not provided in the original decree. The interest awarded from date of decree to date of payment, should not exceed a moiety of the principal. As a general rule interest at 6 p. c., may be awarded but should never exceed 12 p. c.

2. T. L. R., App. 1.

2.—*Interest awardable by execution court.* Every decree for payment of money carries interest with it, unless distinctly disallowed by the terms of such decree. In all cases where decree is silent as to the rate of interest, interest at the rate of 6 p. c., per annum (subject to the provisions of Rgs. I & IV of 1010) should be allowed. The court executing the decree should not enter into the merits of the claim for interest.

No interest on costs and compound interest should be allowed.

3. T. L. R., App. 21.

3—*Further interest.*

Section 204 of the C. P. C., prohibits further interest being awarded in execution when the decree is silent on the matter. ***Keshavan* vs. *Sridharan Memburipad.*** **10. T. L. R., 48.**

SECTION 207.

1—*Mesne profits.*

The question of mesne profits may be left for settlement in execution when the suit is for land and profits, but not when the suit is for mesne profits alone in the shape of damages. *Parameswaran.* vs. *Narayanan.* 3. T. L. R., 41

2.—*Question of improvements.*

Under the provisions of the new Civil Procedure Code (Section 207), questions as to value of improvements should not be reserved for settlement in execution. *Kadirsa Labbai.* vs. *Cassim.* 9. T. L. R. 185.

3.—*Determination of value of improvements—stage of.*

Under Section 207 of the Civil Procedure Regulation, it is imperative that the courts should determine the value of improvements claimed by the decree itself ; and not leave it for settlement in execution. *Keshavan* vs. *Krishnan.* 12. T. L. R., 194.

SECTIONS 209 & 210.

—*Procedure in suits for dissolution of partnership or settlement of accounts.*

Held, inter alia, that under Sections 209 and 210 of the C. P. C., a preliminary order should be passed in such suits, to take accounts, and if, on taking such accounts, it is found that the receipts of plaintiff exceed what is due to him in respect of his advances and profits, the final decree should direct him to refund to the defendant the excess he (plaintiff) has drawn :

And that such final decree determining the rights and liabilities of all the partners, will be capable of execution at the instance of any partner (whether plaintiff or defendant) to whom money may be due. *Jagreya Sait* vs. *Velayudhan.* 11. T. L. R., 48.

SECTION. 220.

——*Certificate of non-satisfaction—evidence of truth of decree—competency of a court to adjudicate on question of expenses incidental to execution.*

Held that, under Section 220 of the Code, a certificate of non-satisfaction of a decree, sent for execution to another Court, is conclusive proof of the truth or genuineness of the decree, of the correctness of the copy thereof transmitted for execution ; and of the jurisdiction of the Court that passed the decree to pass it ; but nothing in the Section prohibits a Court

CIVIL PROCEDURE CODE—*Continued.*

executing a decree to ascertain whether the expenses incidental to execution of the decree have been correctly calculated or charged to the Judgment-debtor. *Paliathu Achan.* vs. *Varki.* 12. T. L. R., 39.

SECTION 221.

——*Procedure in cases of attachment of moveables in the custody of a public officer—Duties of a public officer to whom a judicial prohibitory order is issued.*

Held that it is the duty of the Court on an application to attach moveables in the execution of a decree, to satisfy itself that the moveables so sought to be attached, belonged to, or were delivered to, the decree-debtor; that the duty of the officer to whom a prohibitory notice under Section 221 is issued, is to hold the moveables in his official custody, subject to the further order of that Court; that it is not the business of the latter officer to enquire whether the moveables belonged to the debtors or not; that it is not competent to him to disregard the notice because, in his opinion, the order was not rightly issued or that the Court did not make proper enquiries about the ownership of the moveables before the issue of the notice; that Section 221 requires public officers who get prohibitory notices, without regard to any right asserted or proved to the articles in their custody by any person, to hold them subject to the further order of the Court, and should he, however, entertain any doubt about the propriety of the order or of the title of the judgment-creditor to have the articles attached, he should simply refer the party aggrieved or affected by the notice, to the Court which issued the same, keeping the articles in his custody pending the further instructions of that Court; and that as the defendant (Dewan Peishcar in this case) took upon himself the responsibility of disregarding a legal attachment of Court, by ordering his subordinate to hand over the moveables to a third party, he is certainly liable civilly for the consequences that followed from that act. *Lakshmi* vs. *Nagamiah.* 10. T. L. R., 178.

SECTION 223.

1.—*Disposal of applications for execution.*

1. On an application presented by the Judgment-creditor in the Form prescribed in Section 196 of the (old) Code of Civil Procedure, it is the duty of the Court to issue all such processes, as the nature of the assistance sought for in the last column requires, without waiting for, or demanding, a fresh application. For instance, A, a Judgment-creditor, applies for the execution of the decree by attachment and sale of landed property one year after the date of the de-

cree. It is the duty of the Court firstly to issue to the debtor a notice to show cause, fixing a date for its return, 2ndly on the return of the notice and after disposing of the debtor's objection, if any, to issue warrant, 3rdly on the return of the warrant of attachment to fix a date for sale and issue the prescribed proclamation, and 4thly to issue a warrant of sale at the proper time. All these steps must be taken by the Court without a fresh application.

2. No application presented under Section 196 of the (old) Code, should be treated as disposed of until and unless all the steps, which the nature of the assistance sought for in the last column requires, are exhausted, or the application is dismissed for default or otherwise.

3. The mere passing of an order to issue a process, is not disposing of the application within the meaning of this section. If the Judgment-creditor fails to pay the process fees due in respect of any process of execution ordered to be issued within 8 days from the date of the order or within such time as the Court may specially grant, the application shall be struck off the file. *Civil Circular No.* 13 *of* 1060. 3. T. L. R., App. 51.

2.—*Application for transfer of decree from one Court to another—whether a step in aid of execution.*

Where an application for transfer of a decree from one Court to another was made within the time prescribed for execution by Section 223 of the C. P. C., but by the time the latter Court was moved to execute the decree, which was done a month after the date of the application for transfer, the period allowed for execution had run out and the lower Court disallowed execution of the decree as time-barred :

Held that the application for transfer is a step in aid of execution ; that that application, the transfer, and the application for execution made after the transfer must be considered as parts of the transaction ; and that, therefore, the execution of the decree is not barred. *Narayanan Thampi* vs. *Neelacandan.*

11. T. L. R., 183.

3.—*Execution of decree—application to attach property not included in previous application for execution—whether a proceeding in continuation of the previous application or a fresh application.*

Held by a FULL BENCH that an application for attachment of properties other than those included in a previous application which is still pending on the file, is not a continuation of the former proceeding, but is a fresh application falling within the provisions of Sec. 223 of the C. P. Regulation.

And that a fresh application for execution three years after the introduction of a new Civil Procedure Code (Regulation II of 1065), when the decree has become barred under para 3 of Sec. 223, will be absolutely barred under proviso to the said Section, unless fraud or force of the defendant is proved. *Narayanan Chettiar* vs. *Ulahannan.* 12. T. L. R, 8.

4.—*Decree—Limitation—Civil Procedure Code (old and new.)*

The holder of a decree which was passed in Thye 1055 made an application for issue of notice and also for the arrest of the Decree-debtor in 1067, which was granted. He, however, caused only a notice to be issued. A second application was made in 1069 to execute the whole decree. It was contended that the execution was barred:

Held that the order on the first application being general and limited to a particular request of the Decree-holder, the application falls within the language of S. 223 of the new C. P. Reg. II. 1065, (*semble*). Even if the application of 1067 had been only for notice to issue, the decree sought to be executed by the application of 1069 would be barred under the proviso to S. 223 which limits the right of a party possessing a decree under the old Civil Procedure Code to enforce it, to three years from the passing of the new Code, that is, till the last day of 1068. *Ramasawmy* vs. *Easwara Pillai.* 12. T. L. R., 175.

SECTION 225. .(*Regulation II of 1037 Section 192.*)

1.—*Right to substitute a person as decree-holder.*

No person has a right to be subtituted as Decree-holder at the execution of the decree, unless the decree be transferred to him by assignment or by force of law. *Narayanan Numpuri* vs. *Pachen.* 3. T. L. R., App. 43.

2—*Execution of decree for partition—co-parceners—assignment of costs—validity of.*

Held that where the parties to a decree for partition are co-parceners, the assignment by any one of them, whether plaintiff or not, of his share in the property covered by the decree to another co-parcener is not invalid, there being no joint liability in respect of such share—that in respect of such property, co-parceners stand to each other in the position of Decree-holders in respect of their own shares and of Judgment-debtors regarding the share of others; that any co-parcener may move for execution of the decree, and that such a decree is not governed by Clause B of the proviso to S. 225. C. P. C.

CIVIL PROCEDURE CODE—*Continued.*

Held also that the assignment by the Judgment-debtor to another of the portion of the decree which relates to costs in respect of which there is *joint* liability, was invalid under the provisions of Clause B of the proviso to Section 225 C. P. C. *Ibraham* vs. *Abthal Rahiman.* 12. T. L. R., 182.

SECTION 227.

——*Representation in execution of deceased party —Defect of party—curing of, in execution.* A, defendant, died during the pendency of a suit, and on plaintiff's application B was joined as party in A's place. After decree plaintiff discovered that B was not A's legal representative and applied to the Court to join C (appellant) as such representative, and the court granted the permission under Section 227 C. P. C.

Held that Section 227 provides only for representation, in execution, of Judgment-debtors who die after decree ; and that if plaintiff by mistake or oversight failed to obtain a decree against the right party, the mistake cannot be cured in execution. *Easwaran* vs. *Chempakaraman.* 9. T. L. R., 136.

SECTIONS 227 & 238.

——*Execution order making a representative liable to a personal decree— Whether a decree —maintainability or otherwise of suit to set aside the order.* [*Subramanyan* vs. *Narayanan reported at* 4. T. L. R. 72 distinguished.]

The question having been referred to a FULL BENCH whether a suit would lie to set aside an order passed in execution proceedings making the representatives of a deceased Judgment-debtor liable to a decree passed against the debtor personally, on the ground that the representatives were in possession of assets belonging to the estate of the deceased :

Held that an order passed in an enquiry held under Section 227 of the Civil Procedure Code falls under Clause B of Section 238, and thus is a decree under Section 2, of the Code ; and therefore the suit is not maintainable.

Held also that the case is distinguishable from the decision in *Subramanien* vs. *Narayanan,* reported at 4. T. L. R., 72., where the question at issue was the *nature* of the Decree-debt, and the decision itself was under Section 267 of old Code of Civil Procedure ; while, in the present case, it is the liability or non-liability of plaintiffs to the Decree-debt that was adjudicated upon by the execution Court. *Narayanan Nampuri* vs. *Sankaran.*
11. T. L. R., 4.

CIVIL PROCEDURE CODE—*Continued.*

SECTION 238. (*Regulation II of* 1037 *Section* 267).

1.—*Execution of decree—Questions in.*

Held that the court executing the decree is incompetent to entertain pleas which would materially alter the obligation fixed by the decree. *Subramanian* vs. *Narayanan.* 4. T. L. R., 72.

2.—*Execution of decree—assignee.*

Held, that under Section 267 of the old C. P. C., a party to a decree, in execution of which he is dispossessed of his property, has clearly the right of appeal. That an assignee of a decree is as much a representative of the original decree-holder as the heirs-at-law, or persons to whom the decree has been lawfully transferred, and that no distinction is recognized by law between the assignee of a decree and the original decree-holder.

Held also that where an order is based on a decree which is subsequently reversed in appeal, the proceedings taken thereunder also must fall to the ground, and a fresh suit is unnecessary to recover property transferred under such decree ; that the Civil Procedure Code does not contemplate the sale of decrees for immoveable property. *Mathu.* vs. *Cochako.* 5. T. L. R., 1.

3.—*Execution of decree.*

Held that the question of the liability of the Puraidom in dispute for the Defendant's decree-debt, being one that has arisen in the execution of the decree in a previous suit to which the present parties were parties arrayed on opposite sides as they are now, and the same question being raised by the Plaintiff and decided against him by the Court executing that decree, the only course open to the Plaintiff was to have preferred an appeal against that order under Section 267 of the old Civil Procedure Regulation, no separate suit to try and determine that same question being permitted by law.

Held also that the decree being against his interest in the property also *i.e.*, the equity of redemption, and he being the decree-debtor under the decree, all proceedings under the Civil Procedure Code incidental to execution, should be taken against him, in that his exemption from personal liability does not make him less a party to the suit or decree or the execution proceedings.

7. T. L. R., 109.

4.—*Maintainability of suit or otherwise to set aside an order passed in execution making a representative liable to a personal decree.*

[*Subramanien* vs. *Narayanan reported at* 4. T. L. R., 72, *distinguished*].

The question having been referred to a *Full Bench* whether a suit would lie to set aside an order passed in execution proceedings making the representatives of a deceased Judgment-debtor liable to a decree passed against the debtor personally, on the ground that the representatives were in possession of assets belonging to the estate of the deceased.

Held that an order passed in an enquiry held under Section 227 of the Civil Procedure Code falls under Clause B of Section 238, and thus is a decree under Section 2 of the Code; and that, therefore, the suit is not maintainable.

Held also, that the case is distinguishable from the decision in *Subramanien* vs. *Narayanen* reported at 4. T. L. R., 72.

where the question at issue was the *nature* of the decree-debt, and the decision itself was under Section 267 of the old Code of Civil Procedure; while in the present case it is the liability or non-liability of Plaintiffs to the decree-debt that was adjudicated upon by the execution Court. *Narayanan Nampuri* vs. *Sankaran.*

11. T. L. R., 4.

5.—*Order to pay money realized in execution of one decree to another decree-holder—whether appealable.*

Where money realised in execution of one decree was ordered to be paid to the holder of another decree:

Held that the order is one as between rival decree-holders and does not fall under Section 238 of the Civil Procedure Code; that such an order does not fall within the term "decree" as defined by that Code; that no appeal or special appeal lies against such an order and that the remedy of the party aggrieved thereby, is a suit for refund of the money wrongly paid, under Section 292 Civil Procedure Code. *Vappumeeran.* vs. *Abdalkadir.* 11. T. L. R., 161.

6.—*Competency of a Court, executing decree to adjudicate on questions of expenses incidental to execution.*

Held that Section 238 which must be taken to apply to and govern the procedure of the Court which passed the decree, when executing such decree, and the Court to which the decree is sent for execution, renders it competent for the Court executing the decree to adjudicate on a question of the amount of expenses incidental to execution and sought to be recovered from the Judgment-debtor, especially where the question was not raised in and deter-

mined by the Court that passed the decree. *Paliathu Achan* vs. *Varki.* 12. T. L. R., 39.

SECTIONS 253 & 255. (*Regulation II of* 1037 *Section* 190).

1.—*Payment of a decree out of Court. Suit for damages.*

Plaintiff had a decree passed against him at suit of the Defendant which he settled by payment out of Court. The Defendant afterwards proceeded to execute the decree, had certain property of Plaintiff sold in auction and became the purchaser thereof. In a suit by the Plaintiff to set aside the sale,

Held that the Plaintiff cannot sue to have the proceedings rescinded and the sale annulled; his remedy being in the nature of a suit to recover damages occasioned by the fraud of the execution-creditor. *Govindan* vs. *Padmanabhan.*

1. T. L. R., 65.

2.—*Suit to cancel execution Proceedings. Satisfaction of decree out of Court.*

In a suit to set aside execution proceedings on the ground that the decree has been satisfied, the objection that, under Sec. 190 old C. P. C., the question of satisfaction of the decree out of Court, could not be entertained and determined, was raised:

Held that Sec. 190 of the old Civil Procedure Code has no application to regular suits to declare execution proceedings null and void on account of fraud, but that it prohibits only inquiry into adjustment of the decree out of Court in the execution proceedings. *Kalanthan* vs. *Michael.* 9. T. L. R., 68.

3.—*Recognition by Court of adjustment of decree made out of Court.*

Under section 190 of the old Civil Procedure Code, no adjustment of a decree in part or in whole, shall be recognized by a Court, unless such adjustment was made through the Court, or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred. *Munan Thampi* vs. *Narayanan Chettiar.* 11. T. L. R, 141.

SECTION 254. (*Regulation II of 1037, Section 190*).

——*Agreement giving time to Judgment-debtor.*

Section 254 of the new Civil Procedure Code, renders void every agreement to give time to Judgment-debtors, unless made with the sanction of the Court. *Munan Thampi* vs. *Narayanan Chettiar.* 11. T. L. R., 141.

SECTION 255.

——*Suit for damages consequent on Judgment-creditor's failure to certify satisfaction of decree made out of Court—cancelment of sale held in execution of decree—dismissal of suit.*

A Judgment-creditor whose decree debt was satisfied out of Court, failing to certify the fact to Court and having brought certain property belonging to the debtor to sale for satisfaction of the decree, the debtor sued to cancel the sale or to obtain such relief as the Court deemed proper. The lower Court dismissed the suit as not maintainable.

On Appeal;

Held, that the debtor cannot seek to set aside the sale complained of.

That, however, a suit is maintainable as against the Judgment-creditor for damages caused to the decree-debtor by the former's breach of contract to certify to Court the satisfaction of the decree. That the contract to certify to Court the payment of the decree-debt is implied in the payment :

And that, therefore, the dismissal of the suit altogether is wrong. *Govindan* vs. *Ramakrishna Aiyan.* 11. T. L. R., 27.

SECTION 262 (*Regulation* 2 *of* 1037 *Section* 209).

——*Interpretation of the word "Estate"*. Section 209, old code, does not apply to ordinary lands paying revenue to Government. The word Estate which occurs in this section refers to estates like Edappalli, Punatu, &c. Except in the case of the latter the Civil Courts have no power to call upon the Revenue officers to partition lands in execution of decrees. *Civil Circular, No.* 20 *of* 1061.

[illegible] 4. T. L. R. App. 29.

SECTIONS 263, 265, 269, 270 and 271. (*Regulation* 2 *of* 1037 *Sections* 189, 219, 221, and 223).

——*Decree—attachment of—decreeholder.*

Held that a decree of Court is no doubt property that can be attached under Section 189 of the old Civil Procedure Code and that it (the decree) falls under the description of other property in that section; that the mode of attachment depends upon the nature of the decree sought to be attached; that if it is a simple decree for money the attachment should be made under sections 221 and 223, (of the old Code); that the provisions of these sections should be strictly complied with to make the attachment complete and legally valid; and that if it is a decree for either immoveable

property, or for money charged on specific immoveable property the attachment should be made according to the provisions of Section 219.

Held also that a regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money, and where there has been no such attachment, any sale that may have taken place is not simply voidable but *defacto* void. *Ramanatha Row.* vs. *Asem.* 6. T. L. R., 81.

SECTIONS 265 & 267. (*Regulation II of* 1037. *Sections* 222 *and* 249).

Negotiable Instrument—Sections 222 *and* 249 (*old*) *Civil Procedure Code. Attachment by actual seizure—Obligor and obligee—Non-negotiable Instrument—Validity of Attachment and sale—subsequent and prior attaching creditor.* A executes a registered debt-bond to B for a certain sum of money, pledging, as security, with him (B) a debt-bond executed in A's favour by C. In execution of a decree against B, his right, title and interest in the said registered bond (executed by A) were sold and purchased by D, the attachment by Court being made by means of prohibitory notices under Section 220 (old) Civil Procedure Code, and not by actual seizure. The Court therefore, which made the attachment, did not deliver the bond to D, but simply furnished him with a sale certificate. Some time after this, in execution of another decree passed against B, the debt-bond obtained by A from C and pledged as security to B was also attached by actual seizure and sold to, and purchased by E who was put in possession of this bond by Court. E subsequently delivered the bond to C on his paying E the amount secured thereby. D now seeks recovery from A of the amount of the registered bond executed by A to B in virtue of his right as purchaser thereof. A pleads not liable to pay the amount sued for, unless D delivers to him not only the bond sued on (the one executed by A to B) but also the bond executed to A by C and pledged with B.

Held (Justice Ormsby dissenting) that the registered bond in question not being a negotiable instrument, is not governed by Section 222 of the (old) Civil Procedure Code which requires that the attachment of negotiable instruments should be made by actual seizure.

That the legal mode of attaching debt-bonds of the kind (which are not negotiable instruments) is by prohibiting the obligee from receiving the payment, and the obligor from paying the debt.

CIVIL PROCEDURE CODE—*Continued.*

That no rule specially applicable to the sale of non-negotiable instruments, is prescribed in the Code.

That a debt-bond not attached by actual seizure may be sold since Section 249. old C. P. C. authorizes the delivery of such bonds to purchasers, being made by service of prohibitory notices on the obligor and obligee.

That actual delivery of bonds of this description is not necessary to give validity to its attachment and sale.

That a judgment-debtor, by handing over a bond already attached by means of prohibitory notices to a subsequent attaching creditor, cannot defeat the prior attachment and sale legally made. *Kasipilla* vs. *Kurien.* 6. T. L. R., 1.

——Section 269.

Right of attaching creditor—Recovery by suit of moneys deposited with the Sirkar. Purchase at sale in pursuance of attachment made.

Plaintiff, as the execution-creditor of a party who (it is alleged) is entitled to certain money deposited with the Sirkar, attaches this deposit in execution of his decree by a prohibitory order. The Sirkar denies that any such money is due and refuses to pay the same. The Plaintiff, thereupon, obtains an order of the Court which passed the decree in his favour, to recover the money from the Sirkar authorities, and brings this suit on the basis of that order.

Held by a FULL BENCH (1) that Plaintiff has not, by mere attachment and order of the Munsiff, acquired such right to, or property in the deposit alleged to exist in the custody of first Defendant—the Sirkar—as to entitle Plaintiff to maintain a suit for recovery of the deposit. (2). That Plaintiff's right to bring a suit can only be acquired by purchase at a sale in pursuance of the attachment made. *Ramaswamy Aiyan* vs. *Dewan of Travancore.*
10. T. L. R., 128.

See also Section 263 *Supra.* 6. T. L. R., 81.

Section 270.

1.—*Money decree—Court sale of—Purchase of.*

Held that Section 270 (clause b) of the Civil Procedure Code enables an attaching creditor, by mere attachment, to execute a money-decree attached; and that the sale and purchase of a money-decree in execution is invalid and inoperative. *Sambhu Potti* vs. *Padmanabhan.* 11. T. L. R., 193.

CIVIL PROCEDURE CODE—*Continued.*

2.—*Attachment of decree—execution.*

Held that under Section 270 of the Civil Procedure Code a person executing a decree by attaching another decree is not required to bring the latter to sale, an attachment duly made being sufficient to give the execution creditor the right to receive the money due under the decree that has been attached. (*Sambu Potti* vs. *Padmanaban* reported at 11. T. L. R., 193, followed).
Thankammal vs. *Poopillai.* 12. T. L. R., 183.

SEE ALSO SECTION 263 *Supra.* 6. T. L. R., 81.

SECTIONS 272 & 273.

1.—*Attachment—effect of, to save limitation in execution, under the old Limitation Regulation.*

Plaintiff is the decree-holder in O. S. No. 67 of 997 and the Defendant the decree-holder in No. 669 of 1053—both decrees being against the members of the same family. In execution of the former decree, Plaintiff attached in 1022 certain properties of his Judgment-debtor. No sale followed this attachment. In Kanni 1057, the Defendant, in execution of his decree, caused the attachment of the same properties and brought about the sale of them. In the meantime Plaintiff applied for reattachment of the properties which was granted and attachment was made in Thulam 1058. Plaintiff applied to have the assets realized paid to him as the first attaching creditor. An order was accordingly made, but the Defendant got that set aside on the ground that Plaintiff was not the first attaching creditor. The sale-proceeds were then paid to the Defendant. The Plaintiff files this suit to have the order in favour of the Defendant cancelled and the money recovered from him.

The first contention raised on behalf of the Defendant is that the execution of the Plaintiff's decree (O. S. No. 67 of 997) having become barred on the date of the sale of the attached properties, Plaintiff has no *locus standi* to apply for the sale-proceeds.

Held by A FULL BENCH, that an attachment of property made in execution of a decree, continues in force, under the old Limitation Regulation until it is removed or superseded. It operates *de die in diem* as process of execution upon the decree, and at any time further process for the sale of the property might be issued upon the attachment. The attachment made in execution of Plaintiff's decree in 1022 continued in force up to 1057 when the property, the sale proceeds of which form the subject matter of this suit, was sold. Plaintiff's claim is not barred.

Being the first attaching creditor, he was under the law in force at the date of sale, entitled to be paid first.

Upendra Kammathi vs. *Venu Gopala Prabhu.* 11. T. L. R., 13.

2.—*Attached property—private sale of—withdrawal of attachment—Payment of decree-debt.*

A obtained a money decree against B and C and attached their property. During pendency of the attachment, the property was, for the express purpose of satisfying the decree, sold to Plaintiff's vendor who deposited the decree amount in Court. B subsequently contended in the Munsiff's Court that his having suffered incarceration in Jail for the decree-debt, must be taken to have completely discharged the debt, and was allowed to draw the money before the order was reversed in appeal. A, after the reversal of the Munsiff's order, instead of recovering from B the amount wrongly drawn by him, moved the Munsiff's Court to proceed with the sale of the property, in pursuance of the original attachment. The present suit is for a declaration that the property is not liable to sale in execution of A's decree, or to recover the purchase money from A, B and C. It being contended (1) that the original attachment not having been expressly withdrawn by an order of Court, must be considered to be still in force, and (2) that the private sale to Plaintiff's vendor having been made during pendency of the attachment, is null and void.

Held that the law does not require the formal withdrawal of an attachment on payment into Court of the decree-debt, but leaves it to the option of the parties to apply for and obtain the order of withdrawal of attachment. (Section 272 of the Civil Procedure Code).

Held also that private sales of properties under attachments are prohibited in the interests of the attaching creditor only (Section 273 of the Civil Procedure Code).

Held further that as the purchase money was paid into Court for the benefit of the creditor, the private sale was good and binding on the decree-holder; and that he should have recovered the same from the debtor to whom it was wrongly paid by the Munsiff.

Held consequently that the Plaintiff's purchase, in the circumstances of the case, entitles him to the declaration sought for.

Madhavan vs. *Kurien.* 12. T. L. R., 23.

SECTION 273. (Regulation 2 of 1037 Section 224).

——*Sale of property pending attachment in execution of decree.*

1st Defendant held two decrees for money against 2nd and 3rd

Defendants—623 of 1056 and 226 of 1057. In execution of the decree in No. 623 1st defendant attached the property in dispute on 22nd Dhanu 1058, and pending this attachment, 2nd and 3rd Defendants sold the property to Plaintiff on the 18th Margali, 1061, for the purpose, among other things of satisfying a portion of the decree in No. 623. Subsequent to this private sale to Plaintiff 1st Defendant laid another attachment on the same property in execution of his decree in No. 226 and, eventually, obtained satisfaction of his decree in Suit No. 623 by sale of other properties belonging to the 2nd and 3rd Defendants, the Judgment-debtors. The question raised is as to the validity of the private sale made to Plaintiff pending the attachment in execution of the decree in No. 623 subsequently discharged by public sale of other properties.

Held that if a private alienation made pending an attachment in execution of a decree is valid against a subsequent attaching creditor in the event of the decree for which the attachment was made being afterwards discharged, it is equally so as against all subsequent attaching creditors, whether they be the persons who first attached the property or otherwise, and that so long as the subsequent attaching creditor does not claim under or through the first attachment, he is not, on the construction of Section 224 of the old Civil Procedure Code, entitled to avoid the prior private sale, and to treat the property as still saleable as the property of the Judgment-debtors (vendors.) *Krishna Aiyan* vs. *Kshathrapala Pillai.* 6. T. L. R., 40.

SECTION 275. (*Regulation* 2 *of* 1037 *Section* 230).

1.—*Held* that to exclude a party from his ordinary right to sue within 12 years, and to bring the case within the purview of this section, there must be an actual adjudication under the provisions of the section. An order that Plaintiff could not proceed under those provisions is not such an adjudication. *Venkateswara.* vs. *Akamma, and others* (3. M. H. Civil Revision Petition 139) followed *Padmanabhan* vs. *Padmanabhan.* 1. T. L. R., 93.

2.—*Claim Petition.*

To compel a claimant to sue within one year from the date of the order on his claim, there must have been an adjudication on the question of possession or no possession after investigation; and that an order of the Court to strike off the claim petition without investigation, whether owing to the default of the claimant or otherwise, is not the order contemplated by the Section *Easwaran* vs. *Bagavathi.* 3. T. L. R., 7.

3.—*Held* that the limitation of one year provided for suits to set aside orders passed on claims preferred under this section, has been held to apply to cases in which the claim has been duly investigated, but where this has not been done, the claimant has twelve years. *Vasudevan Empran* vs. *Babbu*. 6. T. L. R., 114.

4.—*Limitation to set aside attachment made in execution of decree against Karanaven.*

Held that this section does not authorize the members of a Marumakkatayam Tarawad to object to the attachment of Tarawad property in execution of decrees against their Karanaven, on the ground that the Judgment-debt is not a charge on the Tarawad; and, therefore, the limitation for a suit to set aside such attachment is not one year. *Idakali* vs. *Narayanen*.

7. T. L. R., 121.

5.—*Held*, that where an application is made to set aside an attachment of property in the possession of the Judgment-debtor, on the ground that the debt was not contracted for purposes which would make it a charge on such property, and involving such other questions as the execution Court is not competent to try, and the Court refers the application to a regular suit, this Section has no application and the period of limitation applicable to cases of that nature is 12 years. *Padmanabhan* vs. *Parameswaran*. 7. T. L. R., 173.

6.—*Sale in execution of decree—suit to cancel. Limitation Sections 7 and 8. Decree against Karanaven. Force of order under Sec. 230 C. P. C.—Effect of as res-judicata.*

Certain property was attached in execution of a decree against a Junior member of a Marumakkatayam Tarawad. The Karanaven and Senior Anandraven objected to the attachment on the ground that the property belonged to the Tarawad and was not liable to be attached for a Junior Member's personal debt. The Court executing the decree, found that the Tarawad had no right to the property. The property was subsequently sold in auction, and a suit is brought by a female member of the Tarawad to set aside the sale one year after the date of the order dismissing the Karanaven's claim.

Held that when a claim is made under this section and on proper investigation it is disallowed, the sale of the property claimed, which may take place subsequently, is subject to the

result of any suit that the unsuccessful claimant may bring within one year from the date of the disallowance of the claim.

That, therefore the suit is barred by one year's limitation under article 7 of the Limitation Regulation.

That article 8 does not apply, as the rights, of the Tarawad which the Karanaven represented in the proceedings under this section were unaffected by the sale.

That the act of the Karanaven, in the absence of fraud or collusion, is the act of the whole Tarawad ; and that a Judgment or decree passed in a suit brought by or against a Karanaven, binds all his Seshakars and operates as *res-judicata.*

And that an order under this section has the same force of *res-judicate* as a decree in a regular suit. *Easwari* vs. *Junis Sett.* 9. T. L. R., 78.

7.—*Order on claim petition—operation of as against property other than that attached. Execution court's power to declare Tarawad property not liable for debt of Junior Members.*

In execution of a money decree against some Junior Members of a Tarawad, certain property belonging thereto was attached, whereon the Karanaven and others preferred a claim which was allowed on the ground that Tarawad property was not liable for the debt. The decree was subsequently assigned, and the assignee attached certain other properties belonging to the Tarawad, which were—no claim having been preferred--sold and purchased by third parties. The suit is brought to set aside this sale. The Munsiff dismissed the suit, but the Zillah Judge held that the order on the claim petition debarred execution of the decree against the Tarawad properties.

Held that the order on the claim petition itself was irregular, an execution Court being incompetent to determine the scope or binding effect of a decree.

Held also that an order on a claim petition will bind and affect only parties thereto and the subject matter thereof ; the sole effect of such an order being simply to preclude the Judgment-creditor from again attaching the property released from attchment thereby without establishing its liability to be sold for the decree-debt by a regular suit. *Neelacantan* vs. *Keshavan.* 10. T. L. R., 64.

SECTION 280—*Effect of order on claim petition.*

Held that an order passed on a claim petition has no force of *res-judicata*, its only effect being that it will be conclusive on the

parties thereto, and as regards the subject matter thereof, if unquestioned for a year from the date of its passing. *Ariraman* vs. *Neelaperumal.* 10. T. L. R., 37.

SECTION 292.

1.—*Sale in execution of decree—effect of a prior sale on a subsequent one—effect of a sale when there are several attachments on a property.*

A prior sale in execution of a decree must prevail against a subsequent one; and although there may be several attachments on a property, the sale in pursuance of any one of them puts an end to all the attachments, and the sale proceeds which occupy the place held by the property before sale, are distributed among the several attaching creditors according to their priorities. *Vittalan* vs. *Kiruttar.* 8. T. L. R., 119.

2.—*Order as between rival decree-holders—aggrieved party's remedy in respect of.*

Where money realized in execution of one decree was ordered to be paid to the holder of another decree:

Held that the order is one as between rival decree-holders and does not fall under Section 238 of the Civil Procedure Code; that such an order does not fall within the term "decree" as defined by that Code; that no appeal or special appeal lies against such order and that the remedy of the party aggrieved thereby, is a suit for refund of the money wrongly paid, under Section 292 (C. P. C.) *Vappumeeran* vs. *Abdalkadir.* 11. T. L. R., 161.

SECTIONS 292 and 557.

1.—*Rejecting claim for distribution of assets realized in execution of decree—whether appealable.*

Held that no appeal lies against an order rejecting the claim of one of several creditors to share in the distribution of assets realized in execution of a decree. The remedy is by a suit.

9. T. L. R., App. 45.

SECTION 305 (Regulation 2 *of* 1037. *Section* 238).

—*Public servants—Sirkar's liability to defend them in the bona fide discharge of their duties—Incompetency of public servants to alter appointments of time made by law.*

When public servants (whether they belong to the execution or judicial branches of the administration) act in good faith on behalf, and in the interests of Government, in the discharge of

their duties, the Sirkar is bound to defend them, especially in a case like this where they have taken the advantage resulting from the official act of their servants.

Held also that the duties of a Civil Court executing a decree are ministerial, that, hence, the order of forfeiture passed under Section 238 of the old Civil Procedure Code, is specially so, as the Court, on Plaintiff's default to pay in the remainder of the purchase money, has no option but to carry on its own motion, the deposit to the credit of Government; that no appeal is allowed against this order; and that there is nothing in the Code or in any other Regulation barring the ordinary right of action in such cases, the rule that bars suits brought to question Judicial acts or proceedings, not clearly applying to orders under Section 238 of the old Civil Procedure Code.

Held further that where the law appoints a time for any act being done, it is not in the power of the courts, much less in the power of clerks, to postpone such time and make fresh appointments so as to bind the parties. *Sirkar* vs. *Aiyappen.* 6. T. L. R., 32.

SECTION 308 *and* 310. (*Regulation* 2 *of* 1037. *Section* 240).

——*Application for cancellation of sale in execution of decree.*

A mortgaged certain property consisting of four items to B. B sued and obtained a decree for money against A and the property. C (Plaintiff) purchased the same. A then applied under Section 240 of the old Civil Procedure Code to have the sale of two items of the property set aside, on the ground that they did not belong to him. The Original Court dismissed the application as one not falling under Section 240 of the old Code but the Zillah Judge, in appeal, allowed it. D (Defendant) who held a decree against A, thereon attached the two items of property, brought them to sale and purchased them himself. C consequently, sues to have a declaration that the second sale is invalid as against him. The lower Courts upheld the plea of the defence based on the cancellation of the first sale to the extent of the two items forming the property now in dispute.

Held that, as no material irregularity in publishing or conducting the first sale was asserted or proved, as required by Section 240 of the old Code, the Court had no Jurisdiction to entertain and hear the application made by A to have the sale set aside.

Bagavathy vs. *Mallen.* 7. T. L. R., 167.

CIVIL PROCEDURE CODE—*Continued.*

SECTION 309.

——*Suit for cancelment of Court-sale. Procedure to be followed by party to the proceedings.*

Certain immoveable property belonging to the Plaintiff was sold in execution of an *exparte* decree obtained against him. It is alleged that he had no notice of the suit, nor of the attachment and sale, and that the *exparte* decree and execution proceedings were fraudulent. He sues to recover the property so sold.

Held inter alia that the Civil Procedure Code prohibits the institution of a regular suit to set aside a sale held in execution of a decree, by a party to the proceedings, on the ground of irregularity. *Varki* vs. *Kumaran.* 10. T. L. R., 4.

SECTIONS 309 & 572, (*Regulation* 2 *of* 1037, *Sections* 241 & 362).

Formal orders confirming sales in execution should be passed.

When Reviews are granted, an order to that effect should be recorded with the reasons for granting the same. *Civil Circular No.* 3 *of* 1057. 1. T. L. R., 49.

SECTION. 311.

1—Sales should not be confirmed earlier than 4 P. M., nor later than 5 P. M.
Civil Circular No. 18 *of* 1061. 4. T. L. R., App. 28.

2—*Bona fide purchaser in auction—Subsequent reversal of the decree.*

Held that when a Judgment-debtor's property is sold in public auction in execution of a valid subsisting decree of an Appellate Court and a third party *bona-fide* purchases it, the debtor cannot sue to set aside the sale by reason of the subsequent reversal of the decree upon review, but must look to the Judgment-creditor for the value of the property sold. *Raman.* vs. *Narayanan.*

2. T. L. R., 95.

SECTIONS 311 & 313.

——*Sale in Court auction—confirmation of—certificate of sale.*

Where A, the mortgagee of immoveable property who purchased the equity of redemption of a certain property sold in auction for a decree debt due by B, the mortgagor, omitted to obtain a certificate of sale from Court to evidence his purchase and symbolical possession of the property under Court process.

Held that the purchaser's title became perfect by the confirmation of the sale by Court; that the purchaser being already in

actual possession no symbolical possession need be obtained; that the grant of certificate is a duty of Court after confirmation of sale; and that there is no provision in the Code requiring the obtaining of certificate by purchaser to complete the sale. *Narayanan* vs. *Raman.* 12. T. L. R., 192.

SECTIONS 312 & 313.

See cases under Section 311. 2. T. L. R., 95.

SECTIONS 313 & 315.

——*Certificate of sale—application for possession.*

The right of an auction-purchaser to apply for possession does not accrue till the certificate is granted, and the time allowed for such application is 3 years from the date of the certificate.

The Court executing a decree is bound to grant a certificate of sale to the purchaser in auction on the sale being confirmed and that without any application from the party. *Marthia Valikan* vs. *Govinda Ekudan.* 3. T. L. R., 65.

SECTION 314.

——*Purchaser at Court sale—impugnment of title by defendant—application of to defence.*

A, a certified purchaser of immoveable property sold in execution of a decree, mortgaged it to Plaintiffs who sue to recover same from the defendants who are in possession. The defendant, the representative of A's Tarawad, contends that the purchase at Court-sale by a junior member of his Tarawad, was made on behalf of the Tarawad, and that, therefore, the mortgage to Plaintiffs was invalid.

Held that no Defendant can set up the plea that a certified purchaser at sale held in execution of decree, purchased not on his own behalf, but benami for another. *Keralar* vs. *Govindan.* 9. T. L. R., 190.

SECTIONS 317, 320 & 321 (*Regulation* 2 of 1037. *Sections* 210, 213 & 214)—*claim petition—Treatment of same as plaint.*

The direction of law to treat a claim petition as a plaint is applicable only where decree-holder complains to the Court and the Court is satisfied that the execution of decree is obstructed by a claimant other than the judgment debtor or any one claiming through him. A petition put in by a party resisting execution, cannot be treated as his opponent's plaint. *Keshavan* vs. *Mathevan.* 3. T. L. R., 58.

CIVIL PROCEDURE CODE—*Continued.*

SECTION 320 (*Regulation* 2 of 1037. *Section* 213).

——*Suit consequent on obstruction to execution of decree.*

In execution of a decree, the Court Commissioner proceeded to value the improvements effected on the plaint property. Plaintiff who was no party to the previous suit, thereupon, presented a petition under Section 213 of the old C. P. C. requiring the property to be excluded from execution and his possession to be confirmed, as it was not liable to attachment under the decree which was being executed.

The Munsiff thereon passed an order directing Plaintiff's claim to be filed as a regular suit. Held that the munsiff was wrong in filing the suit as a claim preferred under Section 213 of the old C. P. C., as the provision of that section is to the effect that where the obstruction (to execution of decree) is by a *bona fide* claimant not ousted from possession, the claim—*i. e.* the complaint of obstruction to the execution of the Court process—should be numbered and registered as a suit *between the decree-holder as Plaintiff* and the claimant as *Defendant*; and that, if the Court was satisfied that the obstruction by Plaintiff was *bona-fide*, it should have allowed the decree-holder to proceed in the summary manner prescribed by the above section. *Maideen Pillai* vs. *Maiden Pillai.* 8. T. L. R., 39.

SECTIONS 320 & 321 (*Regulation* 2 of 1037. *Sections* 213 & 214).

1.—*Held* that the application contemplated by Sections 320 and 321 (Sections 213 and 214 old Code) when ordered to be registered as a suit by the Court to which it is made, should be registered in the Court which has jurisdiction to try the suit.

Held also that the fact that an application under either of these sections has to go to a superior court on account of the value of the property embraced by it being higher than the pecuniary jurisdiction of the court to which the application was made, does not make any difference in the liability to pay court fees. *Avothalkathir Ummal* vs. *Mathevan.* 7. T. L. R., 129.

2.—*Decree-holder's right to dispossess person in possession—mesne-profits.*

In cases where the holder of a decree dispossesses those who are not parties to his decree but are in possession of the property concerned, the latter are entitled to restoration of the property on proving their possession unless the decreeholder proves as against

them, a better title. A person so dispossessed and suing for restoration of the property cannot claim mesne profits under these sections. *Maria ummal* vs. *Chetha Leevu.* 9. T. L. R., 46.

SECTION 321 (Regulation 2 of 1037 *Section* 214).

—*Summary procedure under the section.* To entitle a person to the benefit of the summary mode of procedure allowed by this section, he should have been dispossessed of the property he claims, in the course of the execution of the decree. *Korala* vs. *Agran Nampuri.* 3. T. L. R., 40.

SECTION 324 (Regulation 2 of 1037. *Section* 253).

1.—*Held* that under this section an order becomes final unless the party against whom it is passed gets it cancelled by a regular suit instituted within a year from the date thereof.
Jaganatha Row vs. *Mathevan.* 6. T. L. R., 117.

2.—*Order directing payment of value of immoveable property removed by auction-purchaser during claim enquiry—whether legal.*

Held that standing crop is immoveable property; and, where a purchaser in auction of standing crop, removes it during pendency of a claim-investigation relating thereto, the Court is competent, under Section 324 of the Civil Procedure Code, to direct the purchaser to pay to the successful claimant the value of the crops removed.

Held also that no appeal lies against such an order.

Sreenivasa Aiyan vs. *Aghoram Aiyan.* 12. T. L. R., 27.

SECTIONS. 327 & 331.

——*Arrest of Judgment-debtor once discharged. Held* that a Judgment-debtor is liable to be re-arrested when, under the first order, he has not been actually imprisoned.

Moothu Aiyan vs. *Moothu.* 7. T. L. R., App. 49.

SECTIONS. 330, 331, 343 & 345. (Regulation 2 of 1037 *Sections* 261, 262, 264 and 265).

——*Civil debtor—Report of bad health by medical officer—Increase of daily allowance—Disposal of application, under section 343 (section 264 old Code) to be with the least possible delay.*

——*No debtor to be imprisoned longer than 3 years at one period. See Civil Circular No. 5 of 1058.* 2. T. L. R., App. 9.

SECTION 331.

——*Arrest of Judgment-debtor once discharged.*

Held that a Judgment-debtor is liable to be re-arrested when, under the first order, he has not been actually imprisoned. *Moothu Aiyan* vs. *Moothu.* 7. T. L. R., App. 49.

SECTIONS 357, 358 & 470.

——*Order nisi—compensation for wrongful attachment before Judgment—unconditional withdrawal of suit.*

Held that after the withdrawal of the suit, the Court had no jurisdiction to award summarily compensation for wrongful attachment before judgment.

Held further that under Section 87 of the old Civil Procedure Code the plaintiff has the right to withdraw his suit unconditionally without the sanction of the Court, the only consequence of withdrawing a suit without the permission of the Court, being that the plaintiff is debarred from bringing a fresh suit with respect to the same cause of action. *Sirkar* vs. *Padmanabhan.*

5. T. L. R., 122.

SECTIONS 377 & 378 (Regulation. 2 of 1037. *Section* 165).

1.—*Commissioner's report.*

Under these sections, the report of a Commissioner deputed to make a local investigation is clearly admissible in evidence and would ordinarily be the best material from which questions as to the amount of pattom, &c., of a land can be satisfactorily determined by a Court, provided his competency and trustworthiness are not brought into question. *Thevar Potti* vs. *Parappi.*

3. T. L. R., 4.

2.—*Commissioner's report.* The report of a Commissioner is not in itself legal evidence. It must, as other documents be proved by independent evidence. *Vydianatha Aiyan* vs. *Sankarar.*

3. T. L. R., 27.

SECTIONS 386 & 561.

——*Pauper suits and appeals—admission and disposal of—Payment of institution fees.* See Civil Circular No. 3 of 1058.

2. T. L. R., App. 7.

SECTIONS 396 & 397 (Regulation 2 of 1037. *Section* 293).

——*Pauper suit—Government's right to recover fees in, from unsuccessful defendant. Transfer of decree for execution.*

CIVIL PROCEDURE CODE.—(*Continued*).

Held that under S. 293 of the old Civil Procedure Code, Government has power to recover the institution fees, in a pauper suit from the unsuccessful defendant independently of plaintiff; but a subsequent reversal of the original decree, on appeal, makes the Government liable to refund the fees so recovered.

Held also that the Court to which a decree in a pauper suit is transferred for execution, has power to decide questions relating to the recovery of institution fees. *Sirkar.* vs. *Parvathi.*

5. T. L. R., App. 12.

SECTIONS 409 & 53.

——*Impleading of Sirkar as defendant during progress of suit—notice—Presentation of new plaint where a plaint is returned to be presented in another Court.*

Where the Court orders, during the progress of a suit that the Sirkar should be joined as a defendant, it is not competent to the Sirkar to object to its inclusion on the ground that the 3 months' notice required by Sec. 409 of the Civil Procedure Code has not been given.

Where a plaint filed in one Court is returned to be presented to another Court, it is not competent to the Plaintiff to put in a fresh plaint with an altered cause of action or a prayer for additional relief. He is bound to return the identical plaint returned, with any addition made that may have been ordered by the Court. *Kumaran* vs. *Sirkar.* 8. T. L. R., 122.

SECTION 414.

——*Execution of decree against Sirkar—Procedure. See Civil Circular No. 4 of 1058.* 2. T. L. R., App. 8.

SECTIONS 415 & 417.

——*Samuham—Representative of—Kizhi and Pattaola—Trustee.*

Plaintiffs, who were appointed Kizhi and Pattaola respectively of a Samuham by the president of its Managing Committee, without consulting any members thereof, sued to recover a sum of money due to the Samuham under a bond. The contention of defendants is that the plaintiffs were incompetent to sue on behalf of the Samuham.

Held (following the decision in S. A., No. 239 of 1070) that the Kizhi and Pattaola being only servants of the institution, cannot be accepted as its legal representatives authorized to sue

under Section 415 of the Civil Procedure Code, unless expressly constituted such by the members. Section 417 applies to suits concerning property *vested* in a trustee, executor or administrator. The person suing under this section must be a duly appointed trustee and have the property *vested* in him as such. In other words, a trustee under this section is one expressly constituted a trustee for the purpose of representing the beneficiary in suits.

The Kizhi and Pattaola being themselves members of the Samuham, may sue on his behalf, but subject to the provisions of Section 20. In such case, the Court of first instance should give notice to all the members of the Samuham, before trying the suit.

12. T. L. R., 145.

SECTION 420.

—*Suit by minor without the intervention of a new friend—objection against, in appeal.*

B, a Malabar brahmin (Potti) adopted his sister's son A, with the consent of the members of his family. After B's death his paternal uncle (C) adopted D's son and executed an agreement to him confirming that adoption. A the minor brought an action against C and D to have the said agreement cancelled.

Held, inter alia, that where a suit is instituted by a minor without the intervention of a next friend, and the defendant, without question, allows the case to proceed to decree, he (Defendant) cannot be permitted in appeal to question the validity of that decree on the ground of plaintiff's minority. *Easwaren* vs. *Sambhu.*

9. T. L. R., 160.

SECTION 437.

——*Appointment of adverse claimant as minor's guardian.*

Suit by an undivided co-parcener for recovery of property said to have been trespassed upon by the guardians of the minor daughters of his deceased co-parcener, as the deceased's legal heir and representative on the ground that the property descends, as such, to him by right of survivorship, the deceased having left no male issue. The defendants raised the plea that the minors are the rightful owners of the property, it being their father's self-acquisition.

Held, inter alia, dismissing the plaintiff's suit that the plaintiff's paternal relation of the minors who claims adversely, as against them, the whole property to be his cannot hold the position of their

guardian in preference to their maternal relations, Section 437 prohibiting his appointment as guardian of the minor defendants. *Samuel* vs. *Cherian.* 12. T. L. R., 202.

SECTIONS 462, 471 and 482. (Regulation 2 of 1037, *Sections* 71 and 82.

——*Order to stay execution of decree.*

Held that no Court is competent, by its order, to stay proceedings in a Court of equal or superior jurisdiction. *Narayanan Nampuripad* vs. *Makotha.* 6. T. L. R., App. 1.

SECTIONS 468 and 469. (Regulation 2 of 1037. *Sections* 79 and 254).

1.—*Effect of an attachment before judgment.*

The effect of Sections 79 and 254 of the old Civil Procedure Code is to give priority to the party who, *as a decree-holder*, attaches the debtor's property.

An attachment before judgment, though prior in date, can be of no avail as against an attachment under a decree.

A sale upon an attachment before judgment may legally follow after decree, only if there are no conflicting attachments. *Krishna Aiyan* vs. *Nilakanta Aiyan.* 2. T. L. R., 42.

2.—*Attachment before judgment—subsisting force of after decree—Rival decree-holder—effect of sale under first attachment.*

The question having been raised whether an attachment before judgment, would entitle the attaching creditor to sell the property without issuing a fresh attachment after decree, as against a rival decree-holder who applied for attachment subsequent to the first creditor's decree.

Held that as the order for the first sale was made at a time when there was no conflicting attachment, the sale made in pursuance of that order is legal and efficacious to vest the property in the purchaser.

[*Krishna Aiyan* vs. *Nilakanta Aiyan* reported at 2. T. L. R., 42, distinguished].

Chandi vs. *Eapen.* 9. T. L. R., 72.

SECTION 470 (Regulation 2 of 1037. *Section* 78).

——*Compensation—Dismissal of suit for default to adduce evidence.*

Held that a Court awarding compensation for improper attachment should satisfy itself about the existence of two circumstances, *viz.*, one of the three alternatives enumerated in the first part of the Section (old Code) and the want of probable grounds for instituting the suit.

Held also that the mere dismissal of the suit for default to adduce evidence is not enough to entitle a defendant to compensation. *Raman* vs. *Keshavan*. 7. T. L. R., 15.

SECTIONS 471 & 557.

——*Injunction—order refusing to grant interim injunction—whether appealable—temporary injunction.*

Held that the contemplated ouster of plaintiff whose possession is admitted, entitles him to a temporary injunction to prevent the ouster pending the decision of his claim to a permanent occupancy right.

Held that under Section 557 of the Civil Procedure Code, an order refusing to grant an interlocutory injunction is appealable. 9. T. L. R., App. 6.

SECTION 511.

——*Religious Endowment—Trustee (Swamiyar)—alienation by —Christian's right to impugn.*

Held that a person suing in respect of, or objecting to, alienations of trust property belonging to a religious or charitable institution, must have an interest in the institution (S. 511 of the Civil Procedure Code).

Held further that a Christian, though a venpattom lessee (tenant-at-will) of a Devaswom, cannot in any sense be treated as a person having an interest in a Hindu Devaswom to entitle him to impugn before a Court an alienation of property belonging to the institution, by the trustee thereof. *Ulahannan* vs. *Narayanan Ilayathu*. 11. T. L. R., 102.

SECTION 516 (Regulation 2 of 1037. *Section* 321).

The plaintiff, whose claim on a debt-bond assigned to him by 3rd defendant was dismissed against 1st and 2nd defendants, but decreed against 3rd defendant the assignor, failed to appeal. On 3rd defendant's appeal, however, the lower Appellate Court gave a decree in plaintiff's favour against 1st and 2nd defendants.

Held, on special appeal, that it is not competent to the lower Appellate Court to pass such a decree, and that Section 321 of the old Civil Procedure Code does not apply to the case. *Keshavan* vs. *Sankaran*. 2. T. L. R., 26.

SECTION 530.

——*Power of Appellate Court to bring in new party as respondent.*

Held, inter alia, that this section does not empower Appellate Courts to make one who was no party to the Original Suit, a respondent in appeal. *Raman* vs. *Velayudan.* 11. T. L. R., 93.

SECTION 531.

——Special appeal from *ex-parte* decision. A special appeal lies from a decision passed *ex-parte* against a respondent in regular appeal. *Krishna Aiyan* vs. *Parameswaran.* 2. T. L. R., 29.

SECTION 532.

1.—*Memorandum of objections to lower Court's decree—time for filing the same. Respondent's disability to object in the absence of the appellant.*

A respondent in an appeal will not be entitled to raise an objection to the decree or order in question, unless he shall have filed in the Court a memorandum stating such objection 12 clear days before the date of hearing and shall not, without the leave of the Court for special cause, be heard in support of any other objection. A copy of the memorandum shall be served by the Court on the appellant or his Vakil 8 days before the hearing.

A respondent cannot take objection to a decree of a lower Court if the appellant do not appear at the hearing of the appeal. *Civil Circular No.* 1 *of* 1057. 1. T. L. R., 49.

2.—*Held* that a respont in appeal is entitled to have his objections heard and disposed of, whether the appeal itself is allowed or not. *Coomarasamy* vs. *Gresseux.* 3. T. L. R., 43.

3.—*Held* that a respondent in appeal is not entitled to have his objections heard and disposed of, unless the memo. of objections be filed 12 days before the date of the hearing of the appeal. *Cheria* vs. *Jeyanather Potti.* 3. T. L. R., 46.

4.—A respondent in an appeal will not, except with the special permission of the Court, be entitled to raise an objection to the decree or order in question unless he shall have filed in the Court a memo. stating such objections 12 clear days before the day of hearing, and shall not, without the leave of the Court for special cause, be heard in support of any other objection. *Civil Circular No.* 12 *of* 1060. 3. T. L. R., App. 50.

5.—*Right of respondent to raise objections to decree under appeal.*

Held that a respondent, in special appeal, is entitled simply to raise objections to the decree or judgment of the lower Appellate Court but not to that portion of the decree of the Court of First Instance which has become final by operation of law in consequence of the neglect of Defendant to appeal to the Zillah Court.

Held also that the right of a respondent to raise objections at the hearing of the appeal to any portion of the decree under appeal is co-extensive with his right to prefer an appeal from the decree itself. *Yuseph* vs. *Parameswaran.*

5. T. L. R., 120.

6.—*Cross objection—nature of—Party's right to raise objection in appeal hearing, without appealing against lower Court decree.*

Plaintiffs sued as trustees for a declaration of their right to execute a decree obtained on behalf of the trust fund and also for moneys alleged to have been wrongfully realized by defendants in execution, on the pretence that they were the trustees. Defendants contended that they were the legally appointed trustees and, as such, entitled to recover the moneys, and that institution fee on the value of the whole of the trust property should be levied.

The Munsiff while dismissing the plaintiff's claim for moneys received by defendants whom he held to be co-trustees of plaintiff, granted by the decree a declaration of plaintiff's right as trustees to administer the affairs of the trust. Both parties appealed to the Zillah Court, plaintiff's memo. of appeal being however marked at the heading as presented under Section 332 of the Civil Procedure Code, though treated in all other respects as a Regular Appeal memorandum. These appeals were separately registered by the Zillah Court, and were eventually dismissed. Defendants, thereupon, appealed specially on the ground that the declaration of plaintiff's trusteeship by the lower Courts was beyond the scope of the suit and the Munsiff's Jurisdiction, and plaintiffs sought, at the hearing of the special appeal, to object to the disallowance by the lower Court of his claim for moneys.

Held that the memo. presented by plaintiffs to the Zillah Court, was virtually an appeal against the Munsiff's decree, and that the dismissal of such appeal, not having been specially appealed against, the plaintiffs were not entitled, at the hearing of defendant's special appeal, to object to the decree of the Zillah Court disallowing their claim.

CIVIL PROCEDURE CODE.—(*Continued*).

Held also that the determination of plaintiff's general right as trustees, though incidental to the relief asked for in the plaint, is not the relief prayed for and could not be granted in the suit—the value of the subject-matter being beyond the jurisdiction of the Munsiff. *Sivaraman* vs. *Kasilingam.* 8. T. L. R., 95.

7.—*Objection taken in appeal under the old Civil Procedure Code* (*Regulation* 2 *of* 1037) *and allowed—Impugnment of, in subsequent suit.*

Held that Section 332 of the old Civil Procedure Code (Regulation 2 of 1037), did not prescribe the mode in which objections were to be taken to the lower Court's judgments; and where the final judgment shows that a certain objection was taken, though not in writing, and allowed by the final Appellate Court, the decision with respect to the objection cannot be impugned in a subsequent suit, as based on an objection improperly taken and wrongly allowed. *Govindan* vs. *Govindan.* 11. T. L. R., 112.

Sections 533, 535, 536 & 537.

1.—*Held* that where a case has been fully investigated, but the Court of First Instance has failed to record its opinion thereon the Appellate Court ought to proceed to determine the case upon the evidence, if, in its opinion, there is sufficient material on the record for that purpose, and has no power to remand the case. *Bagavathi* vs. *Kalliani Amma.* 1. T. L. R., 108.

2.—The Zillah Judges should, at the hearing of appeals, take down notes of objections and points urged by the Respondent in answer to the case of the appellant and place them on the record. Care should be taken to make them as legible as possible. *Civil Circular No.* 17 *of* 1060. 3. T. L. R., App. 53.

3.—*Held* that Section 335 of the old Civil Procedure Code authorizes Appellate Courts to make a remand for trial only where the lower Court's decision is on a purely preliminary point and the records of the case do not contain sufficient materials or evidence to determine the other points arising from the pleadings of the parties.

Held also that when the Appellate Court finds an issue, not raised and considered by the Court of First Instance, necessary to be found for the final and complete disposal of the suit, and no evidence on the record of the case to determine that fresh issue, it can only send down that issue for trial and finding, to the first

Court, and not get rid of the case altogether from its file. *Valayudan* vs. *Philipose.* 7. T. L. R., 123.

4.—*Remand.*

A, alleging himself to be the Karanavan of his Tarawad, sued B to invalidate an otti executed by his Karanavan (deceased). B, *inter alia* denied A's Karanavenship. The Munsiff found A's Karanavenship disproved and dismissed the suit. The Zillah Judge affirmed the Munsiff's finding but reversed the decree and remanded the suit with directions to make the real Karanavan of the Tarawad party and proceed with the case *de novo.*

Held that in no case where the judgment of the First Court, on the merits, is affirmed in appeal, is such remand authorized by Section 335 of the old Civil Procedure Code. *Krishnan* vs. *Mathevan.* 8. T. L. R., 46.

5.—*Remand, Sections* 533 *and* 540 *C. P. C. High Court's power to dispose of preliminary point in appeal against remand order.*

Held that a remand order under Section 533 of the Code, can be made only in cases where the Court of First Instance disposed of the suit on a preliminary point, or in such a manner as to exclude any evidence of fact essential to the détermination of the rights of the parties; but where a party failed to adduce evidence and the Original Court disposed of the suit on the available record, and the Appellate Court thinks that the defaulting party might be allowed a further opportunity to adduce evidence, the remand must be made under Section 540.

Held also that in an appeal against the order of an Appellate Court remanding a case, the High Court may enter into the merits and dispose of any preliminary point adjudicated upon by the Court of First Instance. 10. T. L. R., App. 3.

6.—*Remand by Appellate Court under Section* 533. *Preliminary objection overruled. Re-iteration of, in special appeal against appellate decree on merits.*

The question having been referred to a Full Bench whether a party who did not appeal against a remand order of the Appellate Court passed overruling a preliminary objection, may be allowed, in special appeal against the final decree on merits of the Appellate Court, to raise the same preliminary objections.

Held by a FULL BENCH that the remand order in the case, being an interlocutory decree, the special appellant's omission to appeal against it, would not deprive him of the right to impeach it

in the special appeal against the appellate decree on merits and to urge the preliminary objection overruled by the interlocutory decree. *Narayana Prabhu* vs. *Damodara Shenoi.* 11. T. L. R., 8.

7.—*Appellate Court—joinder of additional party—order of remand —Section* 551 *C. P. C.*

Where a Court of first appeal remanded a case to the Original Court for the addition of party and fresh trial :

Held on appeal from the order of remand that by force of Section 551 of the Civil Procedure Code an Appellate Court has the power of adding any party it may think necessary; and that the proper course in the case for the lower Appellate Court was to have added the party itself, and then to have framed the necessary issues and remitted the case to the Original Court for findings on those issues. *Meeravunni* vs. *The Archbishop of Veerapoly.*

11. T. L. R., 180.

SECTION 539.—*Evidence in appeal.*

An Appellate Court is not authorized to try an appeal *de novo* and take the whole evidence. Section 339 of the old Civil Procedure Code only provides for the taking of *additional* evidence in appeal under certain circumstances, the Court in such cases invariably recording the reasons for such procedure. *Potha* vs. *Kivaridu.* 1. T. L. R., 79.

SECTION 540. See *supra* cases under Sec. 533 C. P. C.

10. T. L. R., App. 3.

SECTION 551. See *supra* cases under Sec. 533. C. P. C.

11. T. L. R., 180.

SECTIONS 552 & 559.

——*Restitution in miscellaneous cases. Appellate and lower Courts—Lower Court's duty to give effect to appellate orders.*

The power given to Courts under Sec. 552 C. P. C. to restore to successful appellants what had been taken from them under the decree appealed against, extends to miscellaneous cases also, though the provisions of Sec. 552 are not re-enacted in Sec. 559.

Every subordinate Court whose order is cancelled by the order of the Appellate Court, is bound to give effect to that appellate order, whatever its own view of the case may be.

10. T. L. R., App. 7.

SECTION 553.

1.—*Special appeal from ex-parte decision.* A special appeal lies from a decision passed *ex-parte* against a respondent in Regular Appeal. *Krishna Aiyan* vs. *Parameswaran.*

2. T. L. R., 29.

2.—*Special appeal. High Court's power to revise findings of fact.*

Held by a FULL BENCH that the power vested in the High Court by Clause C, of Sec. 553 (of the new Civil Procedure Code) of revising findings of fact in special appeals, cannot be exercised in special appeals preferred against decrees passed by the Zillah Courts before the 1st Chingom 1066 the date on which the said Regulation came into operation. *Thanumalayaperumal* vs. *Annamalai.* 7. T. L. R., 113.

SECTION 557.

1.—*Clause 9.*

Held that an order rejecting an application for setting aside an *ex-parte* order against a defendant, is appealable under Clause 9 of this section.

Held also that such an order would, in the absence of an appeal against it, debar the defendant from impugning it in second appeal. *Ramaswamy Aiyan* vs. *Raman.* 11. T. L. R., 143.

2.—*Clause 24—order refusing to grant interim injunction.*

Held that under Section 557 of the Civil Procedure Code, an order refusing to grant an interlocutory injunction under Section 472 is appealable. 10. T. L. R., App. 6.

3.—*Clause 28—order remanding a case.* An appeal lies from an order passed under Section 533 remanding a case. But if the party aggrieved by the order does not exercise this right which the law gives him, to at once rectify what he considers an erroneous decision, he may avail himself of the right under Section 560 when a final decree is passed in the case. *Narayana Prabhu* vs. *Damodara Shenoi.* 11. T. L. R., 8.

SECTION 559.

See *supra* case under Sections 552 and 559.

9. T. L. R., App. 7.

SECTION 560. See *supra* cases under Section 557.

11. T. L. R., 8.

CIVIL PROCEDURE CODE.—(*Continued*).

SECTIONS 569 to 576.

1.—When the Court thinks there are sufficient grounds for granting an application for a review, notice of such application should be given to the opposite party. If the Court decides to grant the review, an order granting the application with the reasons for granting the same should be recorded. *Civil Circular No.* 3 *of* 1057. 1. T. L. R., 49.

2.—*Subsequent reversal of an appellate decree upon review. Judgment-debtor's remedy—auction-purchaser.*

When a Judgment-debtor's property is sold in public auction in execution of a valid subsisting decree of an Appellate Court, and a third party *bona fide* purchases it, the debtor cannot sue to set aside the sale by reason of the subsequent reversal of the decree upon review, but must look to the Judgment-creditor for the value of the property sold. *Raman* vs. *Narayanan.* 2. T. L. R., 95.

3.—*Review—appeal.*

The object of a review being to correct evident error or to consider the merits of fresh facts or evidence which the parties could not have adduced at the original trial, the functions of a Court of review are not co-extensive with those of a Court of appeal. A successor in office is therefore incompetent to alter the judgment of his predecessor simply because he could not agree with him on a point of law.

Held also that the order granting a review shall not by itself be open to appeal; but the Appellate Court is fully competent to consider the propriety or otherwise of the order granting the review, in an appeal preferred against the judgment passed upon review. *Mala Pye* vs. *Varki Anthrapper.* 3. T. L. R., 20.

4.—*Review of Judgment.*

Held that it has been repeatedly ruled by this Court as well as by the High Courts in British India, that, though under Section 362 (of the old Code), an order granting or rejecting an application for review of judgment is final, yet the admission or rejection, if improper, may be made the ground of an appeal against the eventual decree and may be considered by the Appellate Court.

Held also that the provisions of Section 362 (of the old Code), seem imperative in that, if the ends of justice require the granting of the review, the Court seems to have no alternative but to grant it.

CIVIL PROCEDURE CODE.—(*Concluded*).

Held further that an erroneous admission of review is not sufficient to set aside the revised decree unless it is shown that it has miscarried justice. *Padmanaban* vs. *Lakshmi.*

6. T. L. R., 73.

SECTION 584.

1.—*Miscellaneous case—Default. Sec.* 108 *Civil Procedure Code.*

Held that a party whose application of a miscellaneous nature is dismissed for default, is entitled to apply for a retrial under Sec. 108 Civil Procedure Code. 8. T. L. R., App. 40.

2.—*Disposal of application for execution on ground of default—whether final—effect of Sec.* 584.

Where an application for execution of a decree was posted to a certain date for hearing of an objection, and the same was dismissed for default of Judgment-creditor's appearance, and a second application was opposed on the ground that, as in the previous application, the burden of proof to rebut the objection was cast on the applicant, its rejection, even though on the ground of default, must be taken to be equivalent to a finding that the objection was valid.

Held that as the *onus probandi* did not entirely rest and was not expressly cast by the Court upon the Judgment-creditor, and the objectors did not adduce evidence in support of their allegation, the rejection of the first application cannot be taken otherwise than as a dismissal on the ground of default of appearance.

That the rejection, for default, of an application for execution of a decree does not, by force of Sec. 584, debar subsequent applications. That section does not extend to miscellaneous proceedings *all* the provisions relating to suits, but only such as can be safely applied to them; and the law expressly recognizes repeated applications for execution. *Boothalingam* vs. *Subramania Pillai.*

12. T. L. R., 155.

COMMISSION—*Examination on, in criminal cases—gosha lady—appearance in public Court—exemption from.*

See case under "Criminal Procedure Code. Section. 70."

12. T.L.R., App. 27.

COMMISSIONERS' REPORT.

See cases under "C. P. C. 377 and 378" 3. T. L. R., 4.
and "Evidence in Civil cases." 3. T. L. R., 27.

COMMITMENT.

1.—*Court of another Session Division.*

Held that the Sessions Judge has no power under the present law to order that the committal shall be to a Court of a different Sessions Division.

Criminal Circular No. 6 of 1057. 1. T. L. R., 36.

2.—*By Magistrates to Sessions Courts.*

Late committals should be avoided. The records of cases for the Sessions should be sent up a week before the commencement of the Sessions.

Criminal Circular No. 11 *of* 1058. 2. T. L. R., App. 11.

3.—*Warrant of.*

Prisoners should not be sent to jail without a regular warrant of commitment. It is enough to send the warrant by post.

Criminal Circular No. 8 *of* 1058. 2. T. L. R., App. 10.

4.—*Discharge.*

When an indictable offence is committed to the Court of Sessions by a competent Magistrate, the Court ought not to discharge the accused without requiring to plead to the charge and hearing any admissible evidence which the prosecution may wish to adduce. The High Court alone is competent to quash an order of commitment. *Criminal Revision Nó* 4 *of* 1060.

3. T. L. R., App. 27.

COMMITMENT ORDER—*District Magistrate's competency to remark on illegality of.*

A District Magistrate is competent to examine a commitment order and seek its reversal through the High Court, if he considers it illegal, until the case is actually taken up for trial by the Sessions Court.

11. T. L. R., App. 24.

COMPENSATION IN CIVIL CASES.

1.—*Court's right to award for wrongful attachment before Judgment.*

Held that after the withdrawal of the suit, the Court has no jurisdiction to award summarily compensation for wrongful attachment before Judgment. *Sirkar* vs. *Palpanabhen* 5. T. L. R., 122.

2.—*Default to adduce evidence.*

Held that a Court awarding compensation should satisfy itself about the existence of two circumstances, *viz.*, one of the three

alternatives enumerated in the first part of Section 70 of the old C. P. C. (Section 470, new C. P. C.), and the want of probable grounds for instituting the suit.

Held also that the mere dismissal of the suit for default to adduce evidence is not enough to entitle a defendant to compensation. *Raman* vs. *Keshavan.*

7. T. L. R., 15.

3.—*Tenant's right to.*

Held that no uniform course of decisions establishing tenant's right to three-fourths of the gross-value on account of compensation for improvements, existing, local custom (which varies considerably) ought to govern the decision of each case. *Bagavathi.* vs. *Padmanabhen.* 6. T. L. R., 105.

4.—*For land assumed by Sirkar—Limitation—Jurisdiction.*

Held that a suit against the Sirkar for compensation for land assumed for public purposes will be barred only if brought after 3 years from the date of the assumption of the land.

The Civil Courts have jurisdiction to assess the amount of compensation payable in such suits, and are not prohibited from doing so by the rules issued by the Dewan on the 25th November 1866, as nothing but a Royal Proclamation or a Regulation passed under sign manual can affect the jurisdiction of Courts.

Even if the Rules of 1866 are granted to have the force of law, they cannot affect the general jurisdiction of Courts, unless it is shown by the Sirkar that the special procedure therein laid down has been strictly followed. *Sirkar* vs. *Gopalan.*

10. T. L. R., 32.

5.—*Reclaimer's right to claim compensation.*

Held, inter alia, that, as until recently no consent of the Sirkar authorities was needed to reclaim Sirkar waste land for cultivation and the recognized usage of the State had been to register waste lands in the name of the first taker, it is but equitable that where a registry is made in the name of a person other than the first taker and improver; the latter should be enabled to recover compensation for improvements made by him; and that no law debars the cognizance of such claims by Civil Courts, and the plaintiff's claim for compensation should have been enquired into by the lower Court. *Pylo* vs. *Kela.* 10. T. L. R., 85.

COMPENSATION IN CRIMINAL CASES.

1.—Compensation cannot be given under the Criminal Procedure Code after the accused has been called regularly to enter on his defence. Criminal Revision case No. 7 of 1060.

3. T. L. R., App. 27.

2.—*Payment of, in cases of frivolous complaints.*

The compensation awarded in cases of frivolous and groundless complaints should not be paid to the accused before the expiry of 60 days from the date of the order awarding the same. *Criminal Circular No.* 13 *of* 1060. 4. T. L. R., App. 5.

3.—*Payment of.*

Compensation awarded to complainants in criminal cases should not be paid to them before the expiry of 90 days from the date of the award. In cases where notice of admission of an application for revision of the order has been received, payment should not be made before the passing of final order on such application. *Criminal Circular No* 4 *of* 1062. 6. T. L. R. App., 11.

4.—*When to be awarded.*

Held (on a reconsideration of the provisions of the Code and on reference to the cases recently decided by the Madras and Calcutta High Courts) that after a defendant has been called upon to adduce his evidence, no award of compensation could be made in his favour, the Magistrate having, on the evidence for prosecution, come to the conclusion that the complaint was *prima facie* good. 7. T. L. R., App. 59.

5.—*Held* that a Criminal Court imposing a fine on the accused for an offence, is empowered by law to award the amount of the fine or any portion thereof as compensation. 7. T. L. R., App. 70.

COMPLAINANT.

1.—*Absence of—discharge.*

See case under Section 230 Criminal Procedure Code.

1. T. L. R., App. 6.

2.—*Unsoundness of mind.*

Where a complainant is of unsound mind and ill, any other person acquainted with the facts could be permitted to carry on the prosecution as complainant. 8. T. L. R., App. 67.

COMPLAINANT.

1.—*Reference of by Magistrates to Police for enquiry before filing.*

Magistrates are directed in future not to refer complaints, preferred to them, to the Police for enquiry and report, before they are brought on their file. *Criminal Circular*, No. 12 of 1061.
4. T. L. R., App. 13.

2.—*Summons Cass.*

Held by the FULL BENCH that, in summons cases, Magistrates should not, as a rule, refer the complaints in such cases to the Police for investigation and report.

In case of such reference, Police should not bind over complainant to appear before Magistrate and prosecute his case. *Criminal Circular, No. 5 of 1060.* 4. T. L. R., App. 2.

COMPOUNDABLE OFFENCES.—*What offences are compoundable and what are not—Distinction pointed out.* 1. T. L. R., 42.

COMPROMISE——*Plea of lispendens.*

Held that the doctrine of *lispendens* does not apply to decrees passed upon the agreements of parties.

Held also that when a suit is compromised, the *litis contestatio* which commits the matter in dispute to the judicial custody, ceases; that, in such cases, there is no adjudication on the merits; and that the compromise being the agreement of parties, is treated as no adjudication in so far as third parties are concerned. *Padmanabhen* vs. *Eravyar.* 7. T. L. R., 42.

2.—*Of Criminal Case in Appellate Court—case of conviction in the Original Court—Illegality of the compromise.*

Where, in a Criminal Case, the Original Court convicts the accused, it is not competent for the parties to compromise the case in appeal, nor for the Appellate Court to accept the Razinamah.
11. T. L. R., App. 2.

CONFESSIONS—See cases under "Evidence in Criminal Cases—confessions."

CONSIDERATION.

1.—*Fraud:*

Where a document is executed for consideration recited therein, it cannot be set aside or the tenure invalidated on the ground of fraud when there is no evidence of fraud. *Sridharan Pothi —vs. Padmanaban.* 1. T. L. R., 80.

CONSIDERATION.—(*Continued*).

SEE CASES UNDER "BURDEN OF PROOF-CONSIDERATION."

1. T. L. R., 81.
12. T. L. R., 28.

SEE ALSO CASES UNDER "DECREE." 12. T. L. R., 132.

CONSTRUCTION.

1.—*Kalam Ayyandu.*

Held that the expression Kalam Ayyandu as used in old deeds means twenty years. *Vasudevan Elayathu* vs. *Keshavan.*

2. T. L. R., 57.

2.—"ஒழிப்பிக்கும் நாள் &c." in a kanom lease. *Held* by a FULL BENCH of the Court that the expressions ஒழிப்புக்கும் நாள் அர்த்தமும் பொன்னும் கொடுத்துகொள்ளாம் occurring in a kanom lease do not import an express or implied contract on the part of the tenant, to surrender the lands, nor do they give the jenmi a right to eject the tenant otherwise than as provided for by the Royal Proclamation relating to jenmies and tenants. *Ammanathan* vs. *Padmanabhen.*

2. T. L. R., 58.

3.—*Kalam Moovandu—Effect of.* The use of the expression "Kalam Moovandu" is generally a distinguishing mark of kanom deeds. *Mammaroo* vs. *Neelan.* 6. T. L. R., 10.

4.—"இநிலங்ஙள்க்குதுல்ப்புண்டெங்கில் துல்ப்புதீர்ப்பீக வாங்ஙிச்ச கொள்ளுன்னு அல்லெங்கில் அர்த்தம் தரும்போள் பற்றிக் கொள்ளுன்னு." *Held* that the occurrence of the clause in a document does not make the mortgage irrevocable, but imports that the tenant is to be repaid his money should the land become uncultivable owing to causes beyond his control and should the landlord refuse to improve the land and render it cultivable at his cost. *Mamaroo* vs. *Neelen.* 6. T. L. R., 10.

CONTRACTS.

1. GENERAL CASES.
2. ALTERATION OF CONTRACTS.
3. BREACH OF CONTRACTS.
4. SPECIFIC CONTRACTS.

1. GENERAL CASES.

1.—*Engagement of a Vakil—Power of revocation.*

The law prescribes certain formalities as the requisites of a valid contract of engagement of a Vakil and until those formalities have been gone through, either party is at liberty to revoke the

oral promise provided of course that no special damages accrue thereby. As a general rule, a promise to engage a vakil is, in the absence of consideration unenforceable at law.

Prince vs. *Jaggrya*. 2. T. L. R., 65.

2.—*Reciprocity of obligation a necessary element in—cause of action—Refund of deposit—Demand for payment—costs.*

Suit for value of stones which plaintiff contracted to supply the defendant (Sirkar) for demarcation purposes, and for refund of deposit made as security for due performance of the contract, on the defendant's refusal to receive the stones.

Held that the law does not recognize an entirely one-sided contract, reciprocal obligation being the soul of contract; and that absence of demand may be a ground for refusing costs of the litigation.

Held also that the plaintiff is entitled to claim the value of the stones and the refund of the deposit. *Curathasamy Ashari* vs. *Sirkar.*

4. T. L. R., 84.

3.—*Completion of—specific performance—Defaulting party.*

A agrees to execute a sale deed to B for a certain amount. A accordingly draws up the deed, gets it registered and presents it to B. B wants time to pay the consideration. A consequently sells that property to another party. B sues A to enforce his sale.

Held that there was no completed contract of sale in the case, and that it is most inequitable to allow specific performance of a contract at the suit of a defaulting party as against the other party who had performed his part of it as settled and agreed between them. *Karumban* vs. *Mathai.*

7. T. L. R., 175.

2. ALTERATION OF CONTRACTS.

1.—*Admissibility of oral evidence to explain terms of.*

Held that when the terms of a contract reduced to writing are not clear, such as a mortgage providing "that the property mortgaged shall be redelivered whenever the mortgagor pays off the debt," an oral agreement may be permitted to be proved to explain the terms of the contract, provided the same is not inconsistent with the actual terms of the contract. *Avuseph* vs. *Thomma.*

5. T. L. R., 124.

CONTRACTS.—(*Continued*).

2.—*Suit based on executed contract—conversion of into suit on executory contract.*

See case under "Evidence—Miscellaneous documents. Razinamah." 11. T. L. R., 99.

3. BREACH OF CONTRACT.

See cases under "Jurisdiction." 1. T. L. R., 96.

1.—*Letter promising a sale—conditions under which contract was presumed to have been completed—Question as to currency in which consideration is to be paid—effect of.*

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Where, under a letter addressed to another, a party promised to sell certain property to the addressee within a specified date, for a specified consideration, and acknowledged receipt of the would-be vendee's portion of the expenses of stamp and registration agreed;

Held that there was a completed contract of sale entitling the promisee to the execution of the sale-deed:

And that where, in such a case, a question arose as to the currency in which the consideration agreed was to be paid, the agreement not being specific on the point, the promisor was bound to give the promisee the option of paying the sum in the currency of higher value, before rescinding the contract.

Held further that it is discretionary with Courts to decree specific performance of a contract; that in the absence of substantial loss sustained by plaintiff, specific performance cannot be decreed as against a person who purchased for value the property in litigation, subsequent to the agreement sued on; that the mere fact that the purchaser had knowledge of the agreement is insufficient to hold that he acted fraudulently or dishonestly; and that the judicial expenses incurred by plaintiff subsequent to the date of the sale impugned, cannot be taken into consideration in determining the amount of plaintiff's loss.

Held further also that the plaintiff in the case is entitled to damages for breach of contract and that, in determining the measure of damages the following items could not be considered:—

(1) Interest on the amount deposited in Court by plaintiff unnecessarily, as all that he was bound to do was to declare his willingness to perform his part of the contract.

(2) The expenses of registering the letter forming the agreement sued on, as registration was unnecessary.

CONTRACTS.—(*Continued*).

(3) Expenses of sending notices of the intention to sue, as such expenses are not allowed except in cases where the law requires such notices to be given. *Manakavalu Perumal Asari* vs. *Govinda Kymal.* 11. T. L. R., 131.

2.—*Breach of private contract by a Public servant (Pravarticar). Award of damages out of security. Aggrieved party's remedy.*

The plaintiff a Pravarticar is alleged to have failed to set off certain paddy given at his request to the Oolsavamadam by certain ryots (2nd to 4th defendants) against a Sirkar tax due by them. On the complaint of the ryots who were compelled to pay the tax due by them, the Devan directed the value of the paddy to be paid to the ryots out of the cash deposit made by plaintiff as security for the proper discharge of his duties as Pravarticar. The suit is for cancelment of that order.

Held that the remedy of defendants 2 to 4 was by means of a civil suit against plaintiff, that the Sirkar could have punished the Pravarticar departmentally, but had no power to award damages to defendants 2 to 4 out of the amount of security deposit by the Pravarticar. *Narayanan* vs. *Dewan of Travancore.* 11. T. L. R., 90.

4. SPECIFIC CONTRACTS.

——*Contract of Mortgage—Registered vendee.*

Held that a mortgage by the deposit of title-deeds is an implied contract of mortgage.

That under the statute law of this state, even an express oral contract of mortgage (which is certainly superior to an implied contract) cannot affect the rights acquired under a duly registered document. *A fortiori* an implied contract of mortgage relating to real property can confer no rights as against the registered vendee of the property.

That all documents relating to immovable property being compulsorily registrable in this country, the legislature of this State has virtually abolished equitable mortgage by the deposit of title-deeds. *Srinivasan* vs. *Varyathu.* 6. T. L. R., 119.

CONTRACT ACT.

1.—SECTION 23.—*Contract for immoral purposes—concubinage—bond.*

Suit for recovery of money due under a bond executed by defendant to plaintiff, providing that the latter (who was the wife of another) was to be paid 400 Rs. for living as plaintiff's mistress.

Held that the bond was executed for an immoral purpose and cannot, therefore, be enforced by Courts. 10. T. L. R., App. 9.

2.—SECTION 55, CLAUSE 3 :—*Damages for Breach of Contract.*

A sells certain properties to B. B pays a portion of the sale consideration in ready cash and executes to him a hypothecation deed on the same properties, agreeing thereunder to pay up the balance of the sale consideration within a stated period or to reconvey the properties, should he default to do so. B, however, defaults to pay the balance, as agreed, and A brings a suit against B for recovery of the balance of the purchase money together with interest. B's defence is that the hypothecation has had no consideration and is not enforceable by A who was merely a name-lender and that, under the terms of the hypothecation deed, A could only obtain a reconveyance of the properties and not the balance of the purchase money.

Held that the result of allowing B the option he claims (*i.e.*, of either paying up the balance or reconveying the properties) and denying it to A, is certainly to allow a defaulter and wrong-doer an unfair advantage over the contract-abiding and innocent party; and common fairness demands the reverse of it, for the latter has law and equity on his side.

Held also that B, by his own agreement, undertook to pay the balance of the purchase money on or before a certain day, and he, having failed to do so, A has the option to elect one of the two remedies available to him, *viz.*, either to recover the money or to recover damages or compensation for the breach of that agreement by B, Clause 3, Section 55 of the Contract Act impliedly giving him (A) the option that he now claims. *Raman* vs. *Keshavan.*

7. T. L. R., 3.

3.—SECTION 61. See cases under Appropriation of payments.

1. T. L. R., 77.

4.—SECTION. 69. *Indemnity suit—Purchaser of Kanom rights during pendency of suit by Jenmi—Purchaser's claim to be indemnified for satisfying the decree.*

See case under "*Lis Pendens.*" 12. T. L. R., 17.

COSTS.

See cases under "contract—general cases." 4. T. L. R., 84.
also "Special appeal." 2. T. L. R., 8.
also "Appeal." 5. T. L. R., App. 9.
also "Appellate Court." 6. T. L. R., 13.
also "SECTION 225, C. P. C." 12. T. L. R., 182.

COURT-FEE.

Applications under Sections 320 or 321 Criminal Procedure Code. See case under Criminal Procedure Code, Sections 320 and 321.
7. T. L. R., 129.

1.—*Appeal from decree cancelling attachment.*

Held that in the appeal by defendant against a decree setting aside his attachment of certain properties alleged to belong to plaintiff the Court-fee need be assessed only on the value of the interest claimed by the attaching creditor (defendant-appellant), *viz.*, the amount due under his decree, even though the value of the attached property may exceed that amount. *Krishnan Potti* vs. *Vasudevar.* 12. T. L. R., 157.

COURT-FEES REGULATION.

1.—Section 5. *Suit to set aside Court-sale—valuation of.*

The value of a suit to set aside a Court-sale is not the amount of the sale-proceeds, but the market-value of the property sold, calculated according to the mode prescribed by the Court-fees Regulation, Section 5, Clause A or D as the case may be. *Raman Nampoori* vs. *Govinden.* 8. T. L. R., 166.

See cases under "Jurisdiction." 12. T. L. R., 44.
12. T. L. R., 188.

See also cases under "Limitation. Section 5."
10. T. L. R., App. 1.

CRIMINAL PROCEDURE CODE.

Regulation V of 1067.

Sections 8, 10, 160 & 410 (Regulation III of 1056. Sections 35, 38, 63 & 70).

——*Trial held by a Subordinate Magistrate out of his territorial jurisdiction—Legality of.*

The question having been raised whether a trial held by a 3rd-class Magistrate at a place out of his territorial jurisdiction, was illegal.

Held that, under Section 63 of the old Criminal Procedure Code, every offence shall be tried in the "District" in which it was committed, the term "District" meaning the area over which a District Magistrate exercises jurisdiction. (Sections 35 & 38 old Criminal Procedure Code).

Held also that, under Section 70, old Code no sentence or order of a Criminal Court can be set aside merely on the ground that the

trial was held in a wrong District, unless the accused is actually prejudiced in his defence thereby. 9. T. L. R., App. 33.

SECTION 12—*Interpretation of the phrase "in any local area" in Section 2.—Defect in description of territorial jurisdiction—Effect of conviction.*

See case under Section 175 below.
Sirkar. vs. *Padmanabha Pillai.* 11. T. L. R., 52.

SECTIONS 33 & 47 (Regulation III of 1056. Sections 379, 381, & 386).

Search of a woman by Police Officer.

Held that a Police Officer in searching the person of a woman for the purpose of discovering symptoms of child-birth acted contrary to law and disobeyed the directions of Sections 385 and 386 of the old Criminal Procedure Code in not calling respectable neighbours to be present at the search and in being, contrary to the habits and customs of the country, personally present when the woman was stripped of her clothes and that therefore he was rightly convicted under Section 166 of the Penal Code.

3. T. L. R., App. 21.

SECTIONS 35, 40 and 262 (Regulation III of 1056 Sections 92, 104 and 105) *Arrest by village watchman.*

A village watchman is not, under the law now in force, a public officer authorized to make arrests under Sections 92 to 105 of the old Criminal Procedure Code. 8. T. L. R., App. 3.

2.—SECTION 35 (Regulation III of 1056. Section 92). *Reasonable complaint or suspicion of theft—procedure of the Police.*

The complainant a year after he loses his dog sees one that he supposes to be his own. The persons in possession at once account for the same. The Police on the information of the complainant arrest the accused without warrant.

Held, in the circumstances of the case, that there was no satisfactory evidence of theft, nor any reasonable 'complaint of such' or 'reasonable suspicion' and that the arrest was a gross abuse of power on the part of the Police. 1. T. L. R., App. 11.

——SECTION 70. *Gosha lady—appearance in public court—exemption from.*

A Gosha woman cited as a witness in a criminal case failed to appear and the Magistrate ordered the attachment of her moveable

properties under Section 70 of the Criminal Procedure Code for evading the service of process. On the ground that she was not aware of the issue of the process, she prayed for release of the attachment and for exemption from appearance in Court.

Held that under Section 380 of the Criminal Procedure Code, the Magistrate may exempt a Gosha Lady from appearance in public Court, and allow her to be examined on commission if sufficient ground exists for such a course. The appearance of such a witness in Court should not be insisted upon as a condition precedent to the Magistrate exercising his discretion with reference to the release of the property attached. 12. T. L. R., App. 27.

——SECTIONS. 74, 221, 224, 256, 359 *and* 360 (Regulation III of 1056, Sections 188, 208 and 435) orders under the sections—Transmission of copies of them to be within 48 hours.

2. T. L. R., App. 1.

——SECTIONS 90 *and* 130.

Where the matter in dispute is of a civil nature and is exlusively for the decision of a Civil Court the District Magistrate cannot pass an order under Section 130. If, however, the Magistrate has reasons to apprehend a breach of the peace the proper course is to compel the parties to give security for keeping the peace. 1. T. L. R., App. 9.

——SECTION 93.—*Security for good behaviour*. The law does not allow of an order to give security for good behaviour being passed on conviction for a substantive offence against property, as it does in the case of offences against a person. If such a course be considered necessary, separate proceedings must be instituted, under Section 93 of the Criminal Procedure Code.

8. T. L. R., App. 34.

——SECTIONS 101, 106 *and* 297. (Regulation III of 1056 Sections 317 and 497).

Held that imprisonment for default of furnishing security under Section 497 of the old Criminal Procedure Code is not imprisonment within the meaning of Section 317 of the old Code, and that such imprisonment may run concurrently with a substantive award of imprisonment. 8. T. L. R., App. 77.

——SECTIONS 116 and 127. (Regulation III of 1056. Sections 518 and 521). *Section 188 of the Penal Code.*

CRIMINAL PROCEDURE CODE,—(*Continued*).

There is nothing in the wording of Section 188 Penal Code to restrict its operation to cases of disobedience to orders made by Magistrates under Sections 518 and 521 of the old Criminal Procedure Code. The Section applies to all cases of dis-obedience to any order made by *any* public servant, duly empowered in that behalf, regarding the matters specified therein.

1. T. L. R., App. 3.

——SECTIONS 118 *and* 121. (Regulation III of 1056. Section 523)

The party against whom an order is passed under Section 118 of the Criminal Procedure Code is entitled to claim the appointment of a Panchayet to consider the propriety of the order. Criminal Circular No. 5 of 1061. 6. T. L. R., App. 11.

——SECTION 128—*Order as to possession of immoveable property—Illegality of in the absence of a preliminary order as to likelihood of a breach of the peace.*

Held that before proceeding to enquire into actual possession of an immoveable property, under Section 128 of the Criminal Procedure Code, the Magistrate should record an order, stating his grounds, that there is a likelihood of a breach of the peace occurring concerning such property, and that, in the absence of such an order, the enquiry and the proceedings based thereupon are illegal.

11. T. L .R., App. 19.

——SECTION 130 (Regulation III of 1056, Section 532). *Forcible entry into a temple.*

Section 532 of the old Criminal Procedure Code has no application to a case where a man tries to force his way into a temple (his entry into it being opposed by the temple authorities) under an alleged right to do so. The Section itself applies only to cases of interruption of, or interference with, the exercise of a right of easement. 8. T. L. R., App. 19.

144 & 390 Dying declaration made before police 19-153

——SECTIONS 149 *and* 259—*Remand—Police custody—Period of detention of accused.*

The question having been referred whether Section 149 of the Criminal Procedure Code restricts the total period during which a Magistrate may order retention of an accused person in Police custody, in an uncharged case, to 15 days in all, or whether, under Section 255, the period of remand that may be granted by a Magistrate is restricted only to 15 days at a time.

CRIMINAL PROCEDURE CODE.—(*Continued*).

Held by a FULL BENCH that the total period of the detention of an accused person in Police custody during Police investigation should not exceed 15 days in all; *i.e.*, no accused person should be in the custody of the Police for more than 15 days, without being charged before a Magistrate. After the accused is charged, the Magistrate has ample powers under Section 255 to adjourn the case for further evidence. 10. T. L. R., App. 48.

——SECTIONS 152,155,158,159, & 242. (Regulation III of 1056. Sections 249,125, & 135)—*Statement—bail.* Section 249 of the old Criminal Procedure Code, authorizes a Sessions Court to take a particular statement made by a witness before a committing Magistrate, as the true statement, notwithstanding that it was denied, or a statement contrary therewith was made by the witness before the Court itself, if the Court could see from the evidence of that same witness before itself, or of other witness before itself, that the original statement was worthy of belief—not that the Court should wholly discredit the testimony of witnesses given before it and have recourse to the testimony of the same persons given elsewhere before another judicial officer on the occasion of making the investigation preliminary to the final trial.

It is unsafe to act upon the testimony of witnesses who were originally arrested, on suspicion, on a charge and confessed to having been accessories after the fact, before their conviction or discharge by the Magistrate or other competent court is formally made. A release on bail under Section 125 of the Criminal Procedure Code pending the final orders of the Magistrates, is not equivalent to a discharge. The desirability of the Magistracy taking a prominent part in the investigation of the causes of any sudden death as contemplated by Section 135 of the Criminal Procedure Code, pointed out. *Sirkar* vs. *Velayudan.* 2. T. L. R., 83.

SECTIONS 160 *and* 404.

Transfer of cases—commitment. The transfer of a case under the orders of the High Court, from a Magistrate of one division to a Magistrate of another, is *per se* sufficient to empower the latter to commit the case to the Sessions Court to which he is subordinate. And under Section 63 of the old Criminal Procedure Code the Sessions Court is competent to try such cases. 8. T. L. R. App., 17.

——SECTION 170.—*Jurisdiction of 2nd class Magistrate—cognizance of offence without complaint or Police report—effect of the irregularity.*

See case under "Jurisdiction of Criminal Courts."

12. T. L. R., 169.

1—SECTION 173. *Prosecution for offence under—Preliminary enquiry whether necessary.*

Held that though the Court would not lay it down as absolutely necessary that under Section 357 of the Criminal Procedure Code a preliminary enquiry should be held in all cases falling under Section 173 of that Code, where it is possible that an explanation may be offered by the offender he should be heard before being prosecuted.

12. T. L. R., App. 15.

2.—*Held* that proceedings under Sections 467—469 being judicial orders passed thereunder, are open to revision by superior authorities; and that in such cases notice must be given to the party prejudiced thereby. 7. T. L. R., App. 83.

SECTION 173.

3.—No sanction of the executive officer before whom a document is produced in a departmental enquiry, is necessary for the prosecution on a charge of forgery in respect of such document.

8. T. L. R., App. 17.

4.—*Registrar's sanction for prosecution—Document filed in evidence in Civil Suit—Whether prosecution expedient until disposal of Suit.*

Held that a Registrar's sanction is unnecessary for prosecution of an offence of forgery alleged to have been committed in relation to a document registered by him.

Held further that where a charge of forgery is brought up in respect of a document registered, but the document is tendered in evidence in a Civil Court, no sanction for prosecution for the offence of forgery should be given, until the real character of the document is ascertained by the result of the suit wherein the document is filed. 11. T. L. R., App. 33.

SECTIONS 173, 327 *and* 328.

——*Registrar whether a Court—Forged document produced before Registrar—whether Registrar's sanction is necessary for Criminal Prosecution—District Magistrate—Power of, to order retrial.*

Held that a Registrar, under the law in force, is not a Court within the meaning of Section 173 of the Criminal Procedure Code; and the Registrar's sanction is not necessary for criminal prosecution in respect of a forged instrument produced before him.

Held also that a District Magistrate has no power to direct further enquiry by any Subordinate Magistrate, in a case of improper dismissal or discharge, even though the case is one exclusively triable by the Court of Session. The District Magis-

trate should, in such cases, report the matter for orders to the High Court on whom alone the power of directing further enquiry has been conferred. 11. T. L. R., App. 27.

SECTION 175—*Interpretation of the term " Our Government"—Territorial Jurisdiction—Commissioner—administration of oath—Departmental enquiry—Statements recorded in—admissibility of, in evidence.*

Held (1) that the words " Our Government" in Section 175 of the Criminal Procedure Code which requires the previous sanction of Government to the prosecution of officers removeable by Government, for offences committed in their official capacity, refer to His Highness the Maha Rajah, and not the Dewan :

(2) that the words " in any local area" which occur at the end of para 1 of Section 12 of the Criminal Procedure Code govern the whole para :

(3) that the omission to define the Territorial Jurisdiction of a Special Magistrate appointed under Section 12 of the Criminal Procedure Code, though defective is insufficient to invalidate the trial held by such Magistrate, if the omission has not occasioned a failure of justice :

(4) that there is no law authorizing Commissioners appointed to hold departmental enquiries, to administer oaths :

(5) that statements of witnesses, recorded in a Departmental enquiry, are inadmissible as *independent* evidence against the accused, when such statements were not given on oath, and were recorded behind the accused ; that these statements, however, may be used for purposes of contradiction, or corroboration in order to enable the Judge to determine the credit due to the witness' statement recorded at the trial :

(6) that it is illegal to admit evidence of crime A to prove the cognate but unconnected crime B, as the reception of such evidence would be to violate the principle of law that no evidence of the bad character of the accused shall be received on behalf of the prosecution, except in reply to the evidence of good character that may be adduced. *Sirkar* vs. *Padmanaba Pillai.* 11. T. L. R., 52.

SECTIONS 181, 182 *and* 230 (*Regulation III of* 1056. SECTIONS 147 *and* 215).

Dismissal of case after issue of warrant to accused. Sections 147 *and* 215 *Criminal Procedure Code. Remarks on calendars—Reference.*

Dismissal of a case under Sec. 147 of the Criminal Procedure Code after taking complainant's statement and issuing warrant to

accused, is wrong. The final order in such a case should have been made under Sec. 215.

The District Magistrate should have recorded his remarks on the calendar in his own hand-writing. When a reference is made, the letter of reference should set forth the facts of the case.

SECTIONS 182 *and* 225. 10. T. L. R., App. 28.

1.—Compoundable offences—What offences are compoundable and what are not—Distinction pointed out. 1. T. L. R., 42.

2.—*Hurt under Sec. 324. P. C. not compoundable.*

The offence of causing hurt under Sec. 324 is not compoundable as the law now stands, though the new Criminal Procedure Code makes it compoundable. 8. T. L. R., App. 82.

SECTION 198—*Previous conviction.*

1.—Penal Code Sec. 75. Strict proof should be admitted of the previous conviction. 1. T. L. R., App. 14.

2.—Necessity of framing a distinct charge pointed out.
1. T. L. R , App. 18.

SECTIONS 210 *and* 230.

———*Joinder of charges—Secs.* 161 *and* 165 *of the Penal Code—Examination of accused in warrant cases—Departmental investigation on misconduct of officer—Examination—Rules of* 1891*—statement given in departmental investigation—admissibility in and effect of, as evidence—Use of evidence of witnesses given in the departmental enquiry, to contradict them.*

Held that the joinder of two distinct offences falling respectively under Secs. 161 and 165 of the Penal Code, committed in respect of different individuals and on different dates, is irregular under the provisions of Sec. 210 of the Cr. P. C.

That in warrant cases of the kind, the examination of the accused should follow and not precede the taking of evidence for the prosecution, and that the failure to examine the accused at the closing of the taking of prosecution evidence, as required by Sec. 230 Cr. P. C.—the case being one of discharge under that section—was irregular.

Held also that there is nothing in the law of the State to prevent a departmental superior from calling upon a subordinate of his, for an explanation of any allegation of misconduct against the latter, and from recording such explanation.

The Rules of 1891, dated 13th November, do not do away with the above power ; nor do they refer to enquiries held for the

purpose of seeing whether there exist grounds for recommending a formal enquiry by means of a commission.

Held further that an explanation or statement given by an officer before his superior, at a preliminary departmental enquiry, cannot, under the general law of evidence, be excluded from a judicial enquiry; and that such statements would constitute evidence against the deponent, in a judicial enquiry, unless rebutted or explained away, or shown to be involuntarily given or incorrectly recorded.

Held further also that the lower court's refusal to allow the prosecution to use the previous statements of witnesses given at the preliminary departmental enquiry, for the purpose of contradicting their evidence at the trial of the case, was irregular.

11. T. L. R., App. 35.

SECTION 211 (Regulation III of 1056, SECTION 453).

SECTION 453 of the old Cr. P. C. which empowers a Criminal Court to try an accused person at one trial for three offences of the same nature, provided they have beeen committed within one year of each other, applies only to cases where all the offences have been committed by the same person or persons. 10. T. L. R., App. 20.

SECTION 212 (Regulation III of 1056 *Section* 454) *effect of the Section fully considered.*

The prisoner was charged under Sections 510, 504 and 426 of the Penal Code. *Held* that the three offences being distinct there ought to be a separate punishment for each.

1. T. L. R., 46.

——*Joint trial of separate offences.*

See cases under Section 380. Penal Code.

SECTION 215 (Regulation III of 1056. *Section* 458).

1.—When a prisoner is tried on a grave charge he may be convicted for any minor offence which forms a constituent of the offence specified in the charge. *Sirkar* vs. *Pariathu.*

9. T. L. R., 123.

2.—*Joinder of cases.*

Section 458 of the Cr. P. C. does not sanction the joinder in one charge of offences committed by several persons independently of each other, even though the offences be of the same nature.

9. T. L. R., App. 16.

SECTIONS 216 *and* 230.

——*Release of when no case is proved prima facie against one or more of them.*

When several persons are charged jointly before a Magistrate and the evidence in support of the charges fails to make out a *prima facie* case against one or more of them, the latter are entitled to their discharge and need not be detained in custody or released on bail, although the proceedings as regards the others may not have been brought to a close. Cr. Circular No. 17 of 1061.

4. T. L. R., App. 15.

SECTIONS 222 & 230 (Regulation III of 1056 SECTIONS 215 & 220).

Discharge and acquittal.

An accused found not guilty after framing a charge and taking evidence for the defence is entitled to an acquittal under Section 220 and not merely to a discharge under Section 215 of the old Cr. P. C. 7. T. L. R., App. 73.

SECTION 227 (*Regulation III of* 1056. Section 209).

Dismissal of case after examination of accused at the outset.

The examination of an accused at the outset, as required in summons cases, would not preclude the Magistrate from dismissing the case under Sec. 209 of the Cr. P. C., and also awarding compensation. 9. T. L. R., App. 36.

SECTIONS 227, 230 & 236. (*Regulation III of* 1056, Sections 209 *and* 215).

Discharge of prisoner—

Discharge of prisoners in warrant cases, should be made under Sec. 215 of the old Cr. P. C., and not under Sec. 209 of the old Code; and award of compensation to accused in such cases is not illegal. 9. T. L. R., App. 40.

SECTION 230 (*Regulation III of* 1056. Section 215).

Absence of complainant.

Held that the absence of the complainant alone is no sufficient ground for a discharge unless there is no other evidence sufficient to substantiate the charge. 1. T. L. R., App. 6.

SECTION 242— Retracted evidence—use of.

See cases under "Evidence in criminal cases—Retracted evidence." 12. T. L. R., App. 33.

SECTIONS 256 & 273. (*Regulation III of* 1056, Sections 334 & 463).

Notes of evidence—See cases under "evidence in criminal cases —mode of recording judgments and depositions."

1. T. L. R., 39.

SECTION 276 (*Regulation III of* 1056. *Section* 346, *clauses* 1 & 2).

The mode of examining the accused should be that provided by Section 346 of the old Cr. P. C. 1. T. L. R., 41.

SECTIONS 290—295 (*Regulation III of* 1056, *Sections* 302, 310 311 & 312).

See cases under "Sentence – Whipping." 1. T. L. R., 38.
11. T. L. R., App. 11.
11. T. L. R., App. 22.

SECTIONS 313 & 330 (*Regulation III of* 1056, *Sections* 272 & 297).

Acquittal—The High Court cannot under Section 297 interfere with an acquittal recorded by a Subordinate Court except on an appeal by Government, or when such an acquittal is based on an error of law patent on the face of the Proceedings.

2. T. L. R., App. 7.

SECTION 321 (*Regulation III of* 1056, *Section* 281).

Suspension of sentence.

Held by the majority of a FULL BENCH that when on the application of a prisoner sentenced to rigorous imprisonment, the rigorous portion of the sentence alone is suspended pending the result of his appeal, the period during which the sentence was so suspended should be included in the term of imprisonment he shall have been finally adjudged to undergo.

5. T.L. R., App. 19.

SECTION 326.

1.—*Held* that under chapter XXII of Act X 1872, it is the High Court which exercises this power in cases where there is no appea and that Zillah Judges may also revise, provided, however, that they do not alter any sentence or order, but submit their opinion to the High Court for final order. *Criminal Circular No.* 7 *of* 1057.

1. T. L. R., 36.

CRIMINAL PROCEDURE CODE.—(*Continued*).

2.—*Section 295 of the old code—Sessions Judges.*

Ordered with a view to save considerable waste of time that application for revision under Section 295 of the old Code, shall hereafter be made direct to the High Court. But Sessions Judges are at full liberty to call for the records of any case from the Subordinate Magistrate for examining them with a view to report for orders to the High Court. 1. T. L. R., App. 15.

3.—*Application for revision on the ground of non-examination of witnesses.*

No application for revision of sentences passed by Criminal Courts, on the sole ground that witnesses were not examined, shall be received unless it is accompanied by a copy of the order of the Court, setting forth the reasons for such non-examination. Every Court which declines to examine witnesses must furnish the party affected thereby, with a copy of its order setting forth such reasons. *Criminal Circular No.* 17 *of* 1060. 4. T. L. R., App. 6.

4.—*Held* that the legislature did not mean by Sec. 295 of the old Code to confer on the Sessions Judge the power of criticizingthe proceedings of the Magistracy, the power conferred thereunder on Sessions Judges and Magistrates being simply to call for and examine the records, with a view to assist the High Court in the exercise of its revisionary powers under Sec. 297 of the Code, there being, however, no objection to their (the Sessions Judges and Magistrates) pointing out to the Subordinate Magistracy an obvious omission of, or in attention to, the rules of procedure and practice noticed by them on perusal of calendars and records called up under Sec. 295 of the Cr. P. C.

Held also that the words ' general control' in Secs. 40 and 41 of the Code, refer to supervision of an executive character, but do not include the power of revising judicial acts of the inferior magistracy, except on appeal. 7. T. L. R., App. 29.

SECTION 327. (Regulation III of 1056. Section 296).

Held that a District Magistrate has, under the proviso to Section 296 of the Criminial Procedure Code, the power to order further enquiry in sessions cases. 6. T. L. R., App. 15.

SECTIONS 327 & 330 (Regulation III of 1056. SECTIONS 295 & 296).

1.—These Sections clearly empower the Sessions Judges to exercise the powers of revision, provided, however, that they do not

alter any sentence or order but submit their opinion to the Sadar Court for final order.

Civil Circular No. 7, of 1057. 1. T. L. R., 36.

2.—*Held* that to invoke the interference of the High Court, it must be shown that the Subordinate Magistrate has made a material error in law or procedure, or that the punishment was too severe or inadequate. *Civil Circular No.* 21 of 1057. 1. T. L. R., 40.

SECTION 329.

1—*Calendars of 2nd-class and 3rd class Magistrates. Remarks on by District Magistrates and Sessions Judges.*

The Sessions Judge need not refer any case to the High Court, unless he is of opinion that the sentence or order of the Magistrate requires revision. If the District Magistrate thinks the proceedings of any Sub-magistrate illegal it is the District Magistrate's duty to make the reference direct to the High Court. In cases where the Sessions Judge differs from the District Magistrate's remarks on the calendars, the Sessions Judge may record his own views and send a copy thereof to the High Court and to the District Magistrate the latter being thus left to address the High Court, if need be, in support of his own views. 11. T. L. R., App. 8.

2—*Suspension of under Section 329 of the Criminal Procedure Code—case in which reduction of sentence is recommended to the High Court.*

Held that a Court of Session or (District Magistrate) examining the proceedings of a subordinate Magistrate can suspend a sentence and order release of the prisoner on bail under Section 329 of the Criminal Procedure Code only in cases where the report made to the High Court under that section recommends the reversal of the sentence passed by the subordinate Magistrate and not merely its reduction. 11. T. L. R., App. 13.

SECTION 330. *High Court's power as a court of revision to go into evidence.*

Held that the High Court as court of revision has no power to interfere with the conviction on the ground of insufficiency of evidence. 3. T. L. R., App. 21.

SECTION 335—*European British subject—accused. Procedure of ordinary Magistrate.*

Held (on a reference made to the Full Bench) that, where the accused is an European British subject, the ordinary Magistrate should record an order of discharge and refer the complainant

to a special Magistrate for redress, unless the Magistrate resolves to proceed under the proviso to Section 335, in which case, he should issue the necessary process for compelling the accused to appear before the special Magistrate having jurisdiction.

11. T. L. R., App. 1.

SECTION 357—*Prosecution for offence under—Preliminary enquiry whether necessary.*

See case under "Section 173 *supra*." 12. T. L. R., App. 15.

SECTIONS 359 & 360 (Regulation III of 1056, Sec. 435).

Contempt of Court.

To convict a person under Section 435 of the old Criminal Procedure Code the offence should be committed in the view or presence of the Court.

Where the act constituting contempt of court, is the use of language calculated to insult the Court, the charge should set out the words used. 9. T. L. R., App. 38.

SECTION 360.

Penal Code, Section 228——offence under. Interruption to the Judicial proceedings—witness refusing to give direct answers to questions.

Where a person is charged for an offence under Section 328 of the Penal Code, the Court should, under Section 360 of the Criminal Procedure Code, record the facts constituting the insult or interruption offered; and for a conviction under the Section, there must be a finding that the accused's act was *intentional.*

Held also that the refusal or neglect to give direct answers to questions put to a witness, unless done intentionally, is not punishable under Section 228 of the Penal Code. 12. T. L. R., App. 1.

SECTION 365.

1.—*Disobedience to Revenue Summons.*

Samprathies are incompetent to sanction prosecution for disobedience to summons issued under their signature.

2. T. L. R., App. 5.

2.—*Paras* 1 *and* 2. *Offence under Section* 174, *Penal Code.*

Held that a Magistrate is competent to try an offence under Section 174 of the Penal Code, committed in contempt of his own authority, if the offence is otherwise triable by him. Para 2 of Section 365 of the Criminal Procedure Code introduces an exception to the general rule enacted in the 1st para and vests in every

Magistrate the power of trying cases of disobedience of his own processes, if he is otherwise competent under the Code to take up the case. 10. T. L. R, App. 43.

SECTION 366.

——*Maintenance. Husband's liability to support wife and children.*

It is the husband's duty to maintain his wife and children however small his means may be, unless he himself is dependent on others for his maintenance. 10. T. L. R., App 12

SECTION 380.

——*Gosha woman--appearance in public Court as witness—Exemption from—Examination on Commission—attachment of moveable property for default of appearance—Release of attachment—appearance not to be insisted upon.*

A Gosha woman cited as a witness in a criminal case failed to appear and the Magistrate ordered the attachment of her moveable properties under Section 70 of the Criminal Procedure Code for evading the service of process. On the ground that she was not aware of the issue of the process, she prayed for release of the attachment and for exemption from appearance in Court.

Held that under Section 380, the Magistrate may exempt a Gosha Lady from appearance in public Court, and allow her to be examined on Commission if sufficient grounds exist for such a course. The appearance of such a witness in Court should not be insisted upon as a condition precedent to the Magistrate exercising his discretion with reference to the release of the property attached.

12. T. L. R., App. 27.

SECTION 395 (*Regulation* III *of* 1056, SECTION 418).

1.—Rules for the disposal of properties produced before Criminal Courts in respect of offences :—

1.—Dirty cloths, unless claimed within 3 days from the date of the disposal of the case in reference to which they are produced, should be burnt. Provided that for any recorded reasons, the Judge may order them to be burnt at once.

2.—Weapons with which crimes are committed must, after the final disposal of the case, be broken up and sold, and the sale proceeds carried to the credit of Government.

3, All unclaimed property of a perishable nature, should be sold immediately after the disposal of the case in reference to which they are produced and the sale proceeds held in deposit for 3 months.

4.—All unclaimed property not falling under Rule 3, should be sold after 15 days notice by beat of tom tom at the station of the Sessions Court and by affixing notice at the office of the committing Magistrate.

The expenses of notice shall be paid out of the sale proceeds.

5. Sale proceeds of articles sold under Rules 3 and 4, shall be credited to Government after 3 months notice published in the Travancore Government Gazette. *Criminal Circular No. 4 of* 1060.

4. T. L. R., App. 1.

2.—*Article bought with the proceeds of sale of stolen property.*

The second-class Magistrate by his order in this case, disposed of the article bought by the accused with the sale proceeds of stolen property.

The District Magistrate is of opinion that the 2nd-class Magistrate was not competent to do so.

Held that the explanation to Section 418 of the Criminal Procedure Code supports the order of the second-class Magistrate.

8. T. L. R., App. 78.

3.—*Mode of disposal of property seized by Police under suspicion.*

Held that the proper course to pursue in regard to the disposal of property seized by the Police under circumstances creating a suspicion of the offence of fabricating false evidence, is to send the property to the District Magistrate to be dealt with in the manner provided by Sections 415 to 417. 9. T. L. R., App. 4.

4.—*Property in respect of which no offence was committed—Disposal of.*

Held inter alia that the Sessions Court's order dispossessing prisoners of property in respect of which no offence was committed is illegal. *Sirkar* vs. *Keshavan.* 10. T. L. R., 141.

SECTION 398 (Regulation III of 1056. SECTION 419).

——*Order relating to disposal of stolen property—District Magistrate's procedure in appeal against. Section* 419 *of the old Cr. P. C.*

The District Magistrate has only revisionary powers under Section 419 of the old Cr. P. C. In exercise of such power he is competent to deal with an application made to him by the aggrieved party with respect to an order relating to disposal of property. Such application, however, should not be treated as a regular Appeal. 10. T. L. R., App. 13.

CRIMINAL PROCEDURE CODE.—(*Continued*).

SECTION 409.

——*Jurisdiction of 2nd class Magistrate—cognizance of offence without complaint or Police report—Effect of the irregularity.*

Where an offence of forgery was disclosed in an enquiry into a petition presented before a 2nd-class Magistrate, and the Magistrate at his own instance took cognizance of the offence and committed the case to the Sessions Court for trial which ended in conviction :

Held that under Section 170 of the Criminal Procedure Code 2nd-Class Magistrates cannot take cognizance of an offence except upon a complaint or Police report.

Held also that the entire proceedings are, under Section 409, *ab initio* void by reason of the above defect, and the conviction illegal.

[The difference between the British Indian and Travancore Criminal Procedure Codes in the matter, pointed out]. *Sirkar* vs. *Konnan.* 12. T. L. R., 169.

CRIMINAL TRESPASS.

See cases under Penal Code, Section 477.

CRIMINAL VAKIL.

——Order of fine against, by a District Magistrate, in a sum not above 50 Rs. See "Regulation I of 1043."

CROP.

Held inter alia that standing crop is immoveable property. *Srinivasa Aiyan* vs. *Aghoram Aiyan.* 12. T. L. R., 27.

DAMAGES.

I. GENERAL CASES.

II. SUITS FOR DAMAGES.

(*a*) *Breach of contract.*

(*b*) *Torts.*

I. GENERAL CASES.

1.—DAMAGES. *Institution fee. Held* that where a suit is brought for damages in respect of property and the defendant questions the title of the plaintiff to the property itself the Court ought not, upon that mere allegation, order the plaintiff to pay institution fee for the property as well. *Virupakshi Aiyar* vs. *Korilappan and another.* 1. T. L. R., 53.

DAMAGES.—(*Continued*).

2.—Trespass.—A takes a property on mortgage from B with the knowledge that it has been previously hypothecated to C, and removes therefrom a building, whereby the value of the security is diminished. In a suit by C for damages,

Held that A is responsible to the latter for any deterioration in the value of the property but that B is primarily liable. *Raman* vs. *Padmanabhan.* 5. T. L. R., 24.

3.—*Suit for, by party injured by a criminal act—Criminal prosecution—effect of.*

The conviction of a person criminally for causing hurt is no bar to his being sued civilly afterwards for damages by the party injured. The criminal prosecution of a person is undertaken to satisfy public justice, while a civil action is brought for the recovery of pecuniary compensation by the individual injured. *Raman* vs. *Govindan.* 12. T. L. R., 104.

4.—*Erroneous levy of stamp duty—maintainability of suit relating to. Aggrieved party's remedy.*

Plaintiff sues the Sirkar to recover the amount of stamp duty and penalty levied by Dewan Peishcar in the course of his official business.

Held that the act of the Dewan Peishcar being one done in good faith and under the express authority of law, no action will lie against the Sirkar.

Held also that the only remedy open to the aggrieved party, in such cases is to apply to the Dewan to refund the amount erroneously collected, and that such application should be made within one year from the date of the payment. *Govindan* vs. *Sirkar.* 9. T. L R., 55.

II. SUITS FOR DAMAGES.

(*a*) *Breach of contract.*

1.—*Resulting from injury to mortgaged property.*

See case under "mortgage—mortgagor and mortgagee." 7. T. L. R., 149.

2.—See case under Contract Act, Section 55. 7. T. L. R., 3.

3.—*To grant a sale of immoveable property.* See case under "sale." 11. T. L. R., 131.

4.—*Private contract by public servant.* See case under "contract, breach of." 11. T. L, R., 90.

DAMAGES.—(*Continued*).

5.—*Suit for, consequent on Judgment—creditor's failure to certify payment of decree amount.*

See cases under Civil Procedure Code, Sections 253 & 255.
I. T. L. R., 65 and
II. T. L. R., 27.

(b) *Torts.*

1.—*Suit for—Defamation—Liability of Judges.*

No action lies against a Judge for acts done by him in the exercise of his judicial functions, provided such act is within his jurisdiction, and the question of malice is irrelevant in such cases. *Venkatarama Aiyangar* vs. *Raghunatha Row.* 2. T. L. R., 98.

2.—*For malicious prosecution. Liability of Judge—Abettor of perjury.*

Held that a Judge is not liable for damages for acts done by him within his jurisdiction, although he might have been actuated in what he did by unworthy motives and malice. *Held* further that an abettor of perjury is not liable for damages. *Venkatarama Aiyangar* vs. *Raghunatha Row.* 4. T. L. R, 26.

3.—*Judicial officer's act. Malice. Irrelevancy of question of.*

When a judicial officer does an act in the exercise of his judicial functions and such act is within his jurisdiction no action for damages will lie against him, however wrongful the act may be, and the question of malice is immaterial in such a case. *Ananta Aiyan* vs. *Andi Aiyan.* 9. T. L. R., 27.

4.—*Revenue officer—wrongful act by, in disobedience to an order of Court—Notice to Dewan—wrongful act without pecuniary damage—Nominal damages.*

Held that Sec. 22 of Regulation IV. of 1010 has no application to Revenue Officers, and that, therefore, no notice under that Section need be given to the Dewan before the institution of a suit. *Held further* that when movables in the custody of a public officer are attached by issue of prohibitory notice under Sec. 221 C. P. C., and such officer (Dewan Peishcar in this case) takes upon himself the responsibility of disregarding the legal attachment of Court, by ordering his subordinate to hand over the movables to a third party, he is certainly liable civilly for the consequences that follow from that act.

Held also further, that law imports damage in cases of legally wrongful act, where no actual pecuniary damage or loss has re-

sulted from it, and that (agreed in by the Chief Justice and Justice Ormsby) this is a case calling for a nominal damage in vindication of the invasion of plaintiff's right and of the Court's authority, which the defendant's order disregarded. *Lakshmi* vs. *Nagamiah*.

10. T. L. R., 178.

5.—*For loss of office of Ashan. Claim to perquisites proclaimed illegal.*

Held that a claim for fees, the levy of which is forbidden by law, cannot be upheld, and that the levy of fees for the performance of the duties of Ashan is illegal. *Held further* that the claim for damages for loss of dignity cannot be entertained. *Kanki Taven* vs. *Ananthan*. 4. T. L. R., 70.

6.—*Use of libellous language—Privilege.*

Held (while dismissing the suit) that the defamatory statement being made as a party or a witness in connection with a judicial proceeding, before a Court of competent jurisdiction and the statement itself being relevant and material to the enquiry, it is privileged. *Held further* that with regard to witnesses and parties, the privilege is absolute though there may be malice or want of reasonable and probable cause, and that if the statement is false, they may be proceeded against by an indictment for perjury. *Padmanabhan* vs. *Vaidyanathan Chettiar*.

5. T. L. R., 90.

7.—*Right of action—Injury.*

A brings an action against B to compel him to cut down certain branches overhanging his fields on the ground that their shade and withered leaves injure the crops of his field.

Held that actions of this kind are allowed by law for the reason that one should enjoy his own rights without injuring those of others. That, hence neither A nor B unless warranted by prescription, has the right to injure the other for his own advantage. That from the fact that A has a right of action it does not follow that B should cut down his trees; for, if A establishes his right, all that he may reasonably do is to compel B to cut off such branches as overshadow his property. *Picha Kutti* vs. *Sivagnanam*. 6. T. L. R., 134.

8.—*Public ways.*

To maintain a suit for the removal of an encroachment on a public thoroughfare, the plaintiff, if a private individual, must allege some special damage. *Sankaranarayana Dikshadar* vs. *Sirkar and Sankararamaj osiar*. 2. T. L. R., 82.

DAMAGES.—(*Concluded*).

9.—*Obstruction to public path—removal of.*

Held that an action for removal of an obstruction to a public path and recovery of damages sustained thereby, is not maintainable by a private party, unless the action is based on the ground of special damage sustained by him. The fact of plaintiff's being obliged to use a more circuitous route, by the obstruction, will not render the suit sustainable. *Narayanen* vs. *Velayudhan.*

11. T. L. R., 194.

10.—*Property subject to Execution—Tortious deed in respect of—Aggrieved party's remedy.*

Held that a suit will not lie for damages on account of any tortious deed committed on property subject to execution under a decree of Court, and that the aggrieved party's remedy is by an application to the Court executing the decree. *Meethian* vs. *Nilakantan.* 11. T. L. R., 211.

11.—*Slander—clauses 2 and 3 of Sec. 146 of the Evidence Act—Cross Examination.*

Held that to vindicate a witness's character against imputations to which a question put in cross-examination might indirectly give rise, an action for damages is unnecessary; and that the paramount interest of the administration of justice requires that parties should have the absolute right of cross-examining their adversary's witnesses subject only to the control of the presiding Judge. *Narayaner* vs. *Krishnan.* 9. T. L. R., 13.

—*Entry into temple after loss of caste by incarceration in Jail.*

See case under Caste. 11. T. L. R., 86.

—*Libel.*

See case under Libel. 12. T. L. R., 72.

—*Suit for malicious criminal prosecution.*

See cases under malicious prosecution. 12. T. L. R., 42 and 12. T. L. R., 196.

—*Suit for, based on consequent wrongful seizure of articles under Abkari Regulation.*

See case under Regulation I of 1054. 12. T. L. R., 95.

DEBT.

1.—*Revival of barred debt—Acknowledgment—Limitation—Bill.*

Held that a document which simply recites the fact of receipt of a certain amount is not a bill in the proper sense of the word.

DEBT.—(*Continued*).

Held further that an acknowledgment of a debt after it had become barred is sufficient under the present Law of Limitation to revive it. *Held also* that the mere assertion that a sum of money will be payable on the happening of an event future and uncertain, is not an acknowledgment of a debt sufficient to remove the statutory bar. *Aiypu* vs. *Varkki.* 4. T. L. R., 73.

2.—*Debt by senior male member—competency of heirs to question the validity of.—Presumption as to—Liability to prove family necessity—Mahomedan Law—Precedency of owner's debts over claims of heirs.*

A the father of B and the paternal uncle of C and D executes a deed of hypothecation to E. E sues B, C, and D. for recovery of money due thereunder. B, C, and D, while pleading discharge, contend that inasmuch as the debt was not incurred for their benefit, neither they nor their shares of the hypotheca are liable for the same.

Held that C and D are competent to question the binding nature of the debt as against them and their interest in the property hypothecated. That the circumstance that A was, at the time of the creation of the charge on the property, the senior male member, raises *prima facie* a presumption that the debt was incurred for the benefit of the family and should be a proper charge upon the common property, though this is but a rebuttable presumption. That to declare the interest of C and D in the hypotheca liable for the debt of A, it must be proved to have been incurred for family purposes and for their benefit as well. That B, being the son of A, takes his father's debt subject, of course, to all his liabilities in that, under the Mahomedan Law the debts of the owner take precedence over all claims by way of inheritance. *Abdul Kadir* vs. *Harihara Aiyan.* 6. T. L. R., 23.

3.—*Mortgage debt: competency of one of several mortgagees to sue for recovery of—Release by one of several persons jointly entitled to—effect of.*

Held that one of several mortgagees can maintain an action for recovery of the debt making the others co-defendants, if they are unwilling to be joined as plaintiffs or if they have done some act precluding them from being plaintiffs.

Held further that the discharge by one of several persons jointly entitled to a mortgage debt is not binding against his coparceners without whose authority express or implied, the discharge was granted. S. A. 440 of 1067 followed. *Assanisa* vs. *Nainan Tampi.* 10. T. L. R., 198.

DEBT-BOND—*Attachment of.*

See case under Civil Procedure Code, Section 267.

6. T. L. R., 1.

DEBTOR.—*Release of when amount of decree is paid.*

A civil debtor committed to jail is entitled to immediate release on payment of the amount of the decree in execution of which the commitment was made. The officer in charge of the jail is competent to receive payment of the judgment debt and set the debtor free. He need not wait for special orders of the Court under whose warrant the debtor was committed to custody. The amount received must be remitted to the Court as early as practicable. The warrant of commitment shall also be returned to the Court with the fact of payment endorsed therein. *Civil Circular No.* 13 *of* 1061. 4. T. L. R., App. 24.

DEBTOR AND CREDITOR.

See cases under appropriation of payments.

1. T. L. R., 77.
10. T. L. R., 83.
10. T. L. R., App. 3.
11. T. L. R., 109.

DECLARATORY DECREE, SUIT FOR.

I. *Requisites for existence of right.*
II. *Adoption.*
III. *Declaration of title.*
IV. *Suits concerning documents.*
V. *Miscellaneous suits.*

I. REQUISITES FOR EXISTENCE OF RIGHT.

1.—*Suits for declaratory decrees under Section* 13 *of the old Travancore Civil Procedure Code.*

Held that (1) The right of a party to obtain a declaratory decree is not absolute, it being discretionary with the courts to grant it or not. (2) A declaratory decree ought not to be made unless there is a right to some consequential relief, which although not asked for, might, if asked for, have been given. It will be a bad policy and a mischievous source of litigation to permit any member of a Marumakkatoyam Tarawad to maintain suits for decrees declaratory of the Tarawad's rights in the absence of any collusion and fraud between the managing male members and the parties against whom the declaration is sought. (The decision of the Privy Council in *Katamanachiar* vs. *Doraisinga Thevar* cited and followed). *Narayani* vs. *Kochupennu.* 1. T. L. R., 83.

DECLARATORY DECREE.—(*Continued*).

2.—*Absence of prayer for consequential relief—cancelment of excommunication from caste—maintainability of suit—caste usages—decision on.*

Held that the grant of declaratory decrees is discretionary with courts; and that a suit for mere declaration when the plaintiff is in a position to sue for a consequential relief, is not sustainable.

Held further that the court should not undertake to solve abstract propositions connected with caste usages and internal economy of caste, unless some property or right is involved in the case.

The suit for mere declaration of the invalidity of a sentence of excommunication from caste, passed against the plaintiff by his fellow caste-men, was held not maintainable, in the absence of a prayer for consequential relief in the shape of damages or otherwise. *Arunachalam* vs. *Matheran.* 11. T. L. R., 82.

II. ADOPTION.

——*Cause of action. Suit by minor—objection against in appeal, untenable. Malabar Brahmins—adoption of sister's son—validity of.*

B, a Malabar Brahmin (Potti) adopted his sister's son A, with the consent of the members of his family. After B's death, his paternal uncle (C) adopted D's son and executed an agreement to him confirming that adoption. A brought an action against C & D to have the said agreement cancelled. The Zillah Judge decreed in A's favour. An appeal is preferred against that decree urging (1) that the suit being for a mere declaration is not maintainable; (ii) that the plaintiff having been a minor on the date of suit, the lower court ought to have dismissed it on that ground; and (iii) that the adoption of sister's son was invalid under Hindu Law.

Held that the plaintiff's action was maintainable, since limitation would operate, if, within the time prescribed by that Regulation, he did not obtain a decree rescinding the agreement which affected his status in the adoptive family:

Held also that where a suit is instituted by a minor without the intervention of a next friend, and the defendant, without question, allows the case to proceed to decree he (defendant) cannot be permitted in appeal to question the validity of that decree on the ground of plaintiff's minority.

Held further, that the ordinary Hindu Law has no application to adoptions made by Malabar Brahmins and the customary law obtaining in that community, sanctions the adoption of sister's son. *Easwaran* vs. *Sambhu.* 9. T. L. R., 160.

DECLARATORY DECREE.—(*Continued*).

III. DECLARATION OF TITLE.

1.—*Sec.* 13, *old C. P. C.—objection to maintainability of suit—effect of-—waiver of.*

A (plaintiff), vendee of certain property, sought to have a declaration of his title to the land. B (defendant) opposed the suit *inter alia* on the ground that the suit being one for a declaration of title when A was in undisturbed possession, was not maintainable. The Munsiff overruled the above objection, but dismissed the suit on the merits. In appeal by plaintiff, the Munsiff's decree was reversed. B filed no objections against the Munsiff's finding, in the Zillah Court, but, in specially appealing, urged his original objection in the High Court.

Held that, under Section 13 of the old Civil Procedure Regulation, it is discretionary with Courts to grant or decline to grant mere declaration of title, according to the circumstances of each case.

Held also that, generally, objections which are not declared by law imperatively to operate as legal bar to actions—such as limitation, and which may or may not be allowed by Courts, in the exercise of discretionary powers vested in them by law, should be taken by the parties interested in doing so, at the earliest opportunity and pressed upon the Court's attention at the different stages of the action; and that omission to notice such objections on the part of the Courts when the parties do not urge them or waive them either by express words or by conduct, would not be a serious irregularity to warrant interference with the final decision if otherwise sound. *Paulos* vs. *Chakko*. 9. T. L. R., 17.

2.—*By person in possession—when not maintainable—cause of action.*

A person who says he has the title and is in possession, is not entitled to sue for a declaration. The defendant's denial of plaintiff's right, in his written statement, cannot justify the suit which must be founded on a cause of action that had accrued prior to date of suit. *Sivasankaran* vs. *Ramanathan*. 9. T. L. R., 33.

3.—*By person in possession—adverse possession as against Sirkar.*

A party in full possession of his rights and seeking for a mere declaration should, by positive evidence, establish his title. As against the Sirkar, possession for less than fifty years can create no title in any person. *Sirkar* vs. *Narayanan*. 10. T. L. R., 70.

DECLARATORY DECREE.—(*Continued*).

4.—*Title to immoveable property—cancelment of decree—Party in possession—cause of action.*

Suit for declaration of plaintiff's title to certain property in respect of which the 1st defendant is alleged to have obtained a decree against 2nd defendant without making him (plaintiff) a party thereto.

Held that the suit is maintainable though the plaintiff's possession, as alleged by him, has not been disturbed by execution of the decree. *Dharmanathan* vs. *Bhagavathiswara Aiyan.*

11. T. L. R., 94.

IV. SUITS CONCERNING DOCUMENTS.

1.—*Karanaven of Malabar Tarawad—Deed of hypothecation by Anandraven—Pledge of Tarawad property as security—Declaratory decree—cause of action.*

A, one of the Anandravers of a Malabar Tarawad, executes a deed of hypothecation to B on the security of the Tarawad property. C, the Karanaven, seeks for a declaration that such hypothecation is void. B objects to the maintainability of the suit, on the ground that he has not taken any steps to enforce his lien upon C's Tarawad property and that C has, therefore, no cause of action to seek for such a declaration.

Held that A having only given a hypothecation upon the plaint property, a suit for declaration of the kind would not lie, inasmuch as the deed of hypothecation fixes a date for the repayment of the debt and the suit is brought before the expiry of such term.

Held also that a Court cannot exercise its discretionary powers of granting mere declaratory decrees in cases of the kind. *Krishnan* vs. *Raman.* 7. T. L. R., 12.

2.—*Suit for cancelment of pattah. Sirkar not a party—effect of pattah to create title—Limitation.*

Suit for declaration of plaintiff's title to property in the possession of mortgagees and in respect to which defendant is alleged to have fraudulently obtained a pattah in his name. The plaint incidentelly prays also for cancelment of the pattah but the Sirkar is not made a party to the suit. The contention having been raised that the suit is not maintainable and that it is barred having been brought one year after the date of the issue of the pattah,

DECLARATORY DECREE.—(*Concluded*).

Held distinguishing the ruling in S. A. 40 of 1065 reported at IX. T. L. R., 33, that the property being in the possession of mortgagees and the pattah in defendant's name and possession, the plaintiff's action is maintainable.

Held also that a pattah granted by the Settlement Department creates no new title; that its cancellation is not absolutely necessary for the declaration sought for; and that the Sirkar not being a party to the suit, the prayer for cancelment of the pattah cannot be granted so as to bind the Sirkar.

Held further that the limitation of one year does not apply to suits for cancelment of revenue proceedings by persons who were no parties directly or indirectly to such proceedings. *Salia Sherif Sahib* vs. *Mahomed Hussan Sahib.* 12. T. L. R., 113.

SUIT TO DECLARE PLAINTIFF ENTITLED TO EXECUTE A DECREE.

See case under "Jurisdiction—Pecuniary." 10. T. L. R., 30.

V. MISCELLANEOUS SUITS.

——*Effect of declaratory decree—execution—Institution fee.*

Held that a declaratory decree contains no executory power; that the cases may be easily supposed in which declaratory decrees as regards title, might be obtained collusively without regard being had to valid legal rights acquired by long possession; that to allow possession in such cases, to be obtained by means of execution upon a mere declaratory decree would be to permit parties in possession to be deprived of their legal possessory rights by the powers of the Court; that no such execution can properly be obtained upon a declaratory decree; and that it amounts to a binding declaration of title decided upon, and no more, as between the immediate parties to the suit and does not, in any case, entitle the party obtaining it to execution of the delivery order of possession of the property.

Held also that in a suit arising out of execution proceedings taken under a declaratory decree, it is wrong to proceed with the suit without levying the institution fee on the plaint or passing an order for its payment in execution of the decree. *Sankaranarayanen* vs. *Mathevan.* 7. T. L. R., 105.

DECREE.

I. GENERAL CASES.

II. ASSIGNMENT OF DECREE.

DECREE.—(*Continued*).

III. Effect of Decree.

See cases under Civil Procedure Code, Sections 253, 254, 263, 265, 269, 271 and 344.

See cases under Penal Code, Sections 193, 210 and 511.
See cases under "Execution of Decrees."

I. General Cases.

1.—*Irregular—want of prayer in the plaint—ground for special appeal.*

The making of a decree for something that is not sued for is wholly an irregular procedure which would justify an interference in special appeal. *Narayanan* vs. *Chacko.* 1. T. L. R., 75.

2.—*Held* that a plaintiff is not entitled to a decree for more than what is claimed in the plaint. Questions of an important nature should be adjudicated upon and not left to be determined in execution. *Chackyama Pilla* vs. *Devan Potti.* 3. T. L. R., 49.

3.—*Award of amount in excess of the plaint amount.*

No plaintiff can recover more than he asks for in the plaint, except in the case of mesne profits. *Sirkar* vs. *Gopalan.* 10. T. L. R., 32.

4.—*Under Sec.* 13 *of Regulation I of* 1067—*Computation of date of.*

Held that the decrees of the High Court in cases heard under Section 13 of Regulation I of 1067, take effect only from the date they are declared in open Court after being confirmed by Royal Sign Manual, and not from the date of the judgments delivered by the Full Bench in such cases. *Parameswaran Namboori* vs. *Elichee.* 11. T. L. R., 98.

5.—*Non-joinder of party—Decree on merits—Irregularity—Effects of. Preliminary technical objection—Procedure.*

The non-joinder of a person as party to a suit cannot be allowed to defeat a claim, and is a mistake which the Court has plenary powers to rèctify. No decree on merits passed by a competent Court could be set aside on the ground of irregularity in the decision or in any interlocutory order passed in the suit, not affecting the merits of the case or the jurisdiction of the Court. (Procedure in the case of Preliminary Technical objections pointed out). *Joseph Kathanar* vs. *Chacko.* 9. T. L. R., 138.

II. Assignment of Decree.

1.—*Assignment of decree—appeal.*

No appeal lies to the Zillah Court against an order of the Munsiff refusing to recognize an assignment of a decree. No assign-

ment of a decree is valid unless notice of the same was given to the Judgment-debtor who is entitled to have his objections thereto heard. The mere recording of a petition of assignment of a decree does not entitle the assignee to sue out execution. *Krishnan* vs. *Narasinga Pye.* 3. T. L. R., App. 36.

2.—*Decree—Assignee of appealable decree.*

A person who accepts an assignment of a decree against which an appeal is preferred, or which is capable of being appealed against, will be bound by the decree of the Appellate Court.
9. T. L. R., App. 21.

3.—*Assignee of appealable decree. Necessity to implead the assignee in appeal. Effect of final decree.*

An assignee of an appealable decree takes the rights of his assignor, subject to the condition that it may be lost or modified by the Appellate Court's order. He is not a necessary party in appeal and other subsequent proceedings, though he may become a party thereto to enable him to protect his own interests.

The final decree in such a case passed in pursuance of the Appellate Court's order, will bind the assignee, even though he was not a party to the proceedings wherein that decree was passed. *Kurian* vs. *Ramakrishna Aiyan.* 9. T. L. R., 75.

4.—*Assignee of decree—His claim against Judgment-debtor in the fact of Court's order discharging decree—Tenability of.*

An assignee of a decree has no right to call upon the decree debtor to pay him the judgment debt, when there is an order of Court recording satisfaction of the decree. *Sankaren* vs. *Aiyappan.*
9. T. L. R., 187.

5.—*Order allowing or disallowing assignment of decree—whether appealable. Assignment of decree for redemption of mortgage, to purchaser of equity of redemption—Validity of.*

An order sanctioning or refusing to sanction an assignment of a decree, is final, the aggrieved party's remedy being by regular suit.

An assignment of a decree obtained by a mortgagor against a mortgagee, made to a purchaser of the mortgagor's equity of redemption at a Court-sale, is a valid transaction, and not void for want of consideration. *Easwaran* vs. *Padmanabhan.*
9. T. L. R., 209.

DECREE.—(*Continued*).

6.—*Assignee's right to sue without impleading assignor—absence of notice —Effect of.*

An assignee may sue in his own name without making the assignor a party, though the English Common Law is otherwise.

The absence of notice will not invalidate an assignment; it will validate any payment made by the debtor to the assignor in good faith, after the date of the assignment. *Subramania Aiyan* vs. *Ramalingam Aiyan.* 9. T. L. R., 81.

7.—*Non-recognition by Court—Effect of as against Decree-holder—Question of consideration.*

The assignment of a decree is invalid unless recognized by the Court executing it; and where the Court declines to sanction an assignment, the decree must be taken as standing in the name of the assignor—the decree-holder, and no objection can be raised to his executing the decree. The defendant's objection that the assignment was executed for good consideration and is binding on the decree-holder, after objecting to the assignment, is untenable. The question of consideration is a matter between the assignor and assignee. *Sankaranarayana Aiyan* vs. *Kavunni Tirumulpad.*

12. T. L. R., 132.

8.—*Decree for partition—Co-parceners—Assignment of costs—Validity of—C. P. C. Section* 225.

Held that where the parties to a decree for partition are co-parceners, the assignment by any one of them, whether plaintiff or not, of his share in the property covered by the decree to another co-parcener is not invalid, there being no joint liability in respect of such share; that in respect of such property co-parceners stand to each other in the position of decree-holders in respect of their own shares and of judgment-debtors regarding the share of others; that any co-parcener, may move for execution of the decree, and that such a decree is not governed by clause B of the proviso to Section 225 C. P. C.

Held also that the assignment by one Judgment-debtor to another of the portion of the decree which related to costs in respect of which there was *joint* liability, was invalid under the provisions of clause B of the proviso to Section 225 C. P. C. *Ibraham* vs. *Avuthel Rehiman.* 12. T. L. R., 182.

III. Effect of Decree.

1.—*Against defendant in appeal.* No decree can be passed in appeal against a defendant whom the Court of first instance ab-

DECREE.—(*Concluded*).

solved from liability and against whom no appeal has been preferred within time. *Cheria* vs. *Jeynather Potti.*

3. T. L. R., 47.

2.—*Decree for partition—Effect of—Hindu Law.*
Vide HINDU LAW 'PARTITION.' 6. T. L. R., 19.

3.—*Against any of the members of Marumakkatayam family.*

A decree of a competent Court binds not only the actual parties thereto but also their privies and representatives, and where persons litigating *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right are to be deemed privies of the persons so litigating. This rule may be advantageously followed in the class of families governed by the Marumakkatayam Law of succession. *Narayani* vs. *Kochu Pennu.* 1. T. L. R., 83.

DECREE-HOLDER.

——*Right to Dispossess Person in Possession.*
See case under Sections 320 & 321 C. P. C. 9. T. L. R., 46.

——*Order as between rival Decree-holders.*
See case under Sections 238 & 292 C. P. C.

11. T. L. R., 161.

DEFAULT—of co-defendant to appear as witness. See case under Section 172 C. P. C.

DEFAULT OF APPEARANCE OF COMPLAINANTS.

——*Procedure in cases of.*

1. On the date appointed for the hearing of a case, or to which the hearing is adjourned, the names of complainants should be called out three times immediately the magistrate takes his seat. If the complainant fails to appear, his name should be called out again after the magistrate has disposed of the other cases for the day.

2. If the complainant does not answer the 2nd call, the magistrate shall examine on oath, the peon who called out the complainant on both occasions, as to the absence of the complainant, reduce the result to writing, and obtain the signature of the peon thereto and then dispose of the case.

3. The order of dismissal for default of appearance shall state the name of the peon examined. *Criminal Circular No. I of* 1062.

6. T. L. R., App. 9.

DEPARTMENTAL ENQUIRY.

1.—*Commissioner's power to administer oath. Statements recorded in.*

See case under Section 170 Cr. P. C. 11. T. L. R., 52.

2.—*Superior's power to call for or record explanation of subordinate—Statements of witnesses in.*

See case under Sections 210 & 230 Cr. P. C.

11. T. L. R., App. 35.

DEVASWOM—*See case under C. P. C., Section 511.*

1.—*Assignment of Devaswom property—Incompetency of manager.*

The management of certain property of a Devaswom vests in the family of A & B. A, the present head of the family, assigns this property without any reference to the right of the Devaswom, to R, for his maintenance under an agreement. B a junior member of the family seeks to set aside the assignment and to declare the right of the Devaswom to the property.

Held that inasmuch as A (though the senior member of the family) is not the present manager of the Devaswom, he is incompetent to make the assignment.

Held also, that even if A is such a manager, he would be incompetent to give away the property to C, without any obligation to contribute to the expenses of the Devaswom and that A cannot, therefore alienate the property. *Parameswaran Nampiathiri* vs. *Krishnen Nampiathiri.* 5. T. L. R., 27.

2.—*Powers of Manushyam—Urallers and Karalers—Kazhakam. Samudayam.*

A manushyam of a Devaswom is synonymous with Samudayam and is competent to execute documents for, and manage the affairs of the Devaswom, only in subordination to the Uralen or Uralens.

[Constitution of Devaswoms considered.] *Narayanan Unni* vs. *Vasudevan Namburi.* 11. T. L. R., 197.

3.—*Representation of—Samudayam and accountant—Landlord and Tenant—Tenant's right to impeach illegal proceedings against his holding.*

Held that the Ooralers are the proper representatives of a Devaswom and not its Samudayam or accountant, and a decree obtained by a Samudayam or accountant as representatives of a Devaswom will not bind the institution.

Held also that a tenant is bound to protect the interests of his landlord and is competent to resist illegal proceedings upon the holding in his possession. *Sesha Aiyan* vs. *Narayanan.*

12. T. L. R., 138.

DEVASWOM.—(*Concluded*).

4.—*Uralan of—competency to take a permanent lease of Devaswom property.*

Held that an Uralan of a Devaswom being incompetent, as a trustee thereof, to enter into contractual relations with the institution, cannot take a permanent lease of property belonging to it (Sections 51 and 56 of the Indian Trusts Act applied). *Nilakandan Namburi* vs. *Vasudevan Namburi.*

12. T. L. R., 33

DEVASWOM BELONGING TO SUDRA.

Redeemable nature of lease granted by.

Held by the FULL BENCH that the presumption, that properties leased to tenants by Devaswoms belonging to Brahmins are irredeemable unless express provision is made for redemption in the lease-bonds, is not applicable to leases granted by Devaswoms belonging to Sudras in the absence of any contract between Sudra Devaswoms and their tenants, creating permanent rights of occupancy, and that the presumption as to the nature of the tenancy, in the absence of such contract, is that the lease is terminable. *Govinden* vs. *Narayanen.* 8. T. L. R., 76.

DISCHARGE. See "Criminal Procedure Code."

DISMISSAL OF WARRANT CASE.

——*Default of appearance of complainant.*

Held that the dismissal of a warrant and non-compoundable case, merely for default of appearance of the complainant, is not authorized by law. 8. T. L. R., App. 75.

DISPOSSESSION.

——Suit for purchase money.

See cases under "Vendor and Vendee." 1. T. L. R., 68.

DISTRICT MAGISTRATES.

1.—*Examination of, by Sessions Court.*

No District Magistrate shall, without the special order of the High Court, be summoned to give evidence before the Court of Session at the trial of cases, in respect of acts done by him *as a Magistrate. Criminal Circular No.* 10 *of* 1061. 4. T. L. R., App. 12.

2.—*Prohibited from issuing general circulars.*

The District Magistrates are requested not to issue general circulars without the previous sanction of the High Court.

Criminal Circular No. 14 *of* 1061. 4. T. L. R., App. 13.

DISTRICT MAGISTRATES.—(*Concluded*).

3.—*Power to revise an order for prosecution—procedure in appeal against an order relating to disposal of property.*

See Criminal Procedure Code, S. 398. 10. T. L. R., 13.

4.—*Competency to remark on illegality of commitment order.*

A District Magistrate is competent to examine a commitment order and seek its reversal through the High Court if he considers it illegal, until the case is actually taken up for trial by the Sessions Court. 11. T. L. R., 24.

5.—*Power to order retrial—case of dismissal or discharge.*

See Criminal Procedure Code, Sections 173, 327 and 328.

11. T. L. R., App. 27.

DOCUMENTS.

1.—*Note of marking the same.*

The documents should be marked according to the order in which they are filed. To facilitate the identification of any exhibit, every document should have an endorsement to the following effect: "A or 1—case No.——Court".

Criminal Circular, No. 6 *of* 1058. 1. T. L. R., App. 18.

2.—*Objections as to admissibility.*

Objections as to the admissibility of documents ought to be taken at the earliest possible opportunity, namely, at the time of the documents being filed in evidence in the Court of first instance, and the omission to do so, is tantamount to a waiver. *Kandan* vs. *Sirkar.* 2. T. L. R., 38.

3.—*Statements by executants—effect of with respect to attesting witnesses.*

Held that statements made by executants of documents cannot bind the witnesses who are intended mainly to witness the fact of execution. *Murayas* vs. *Gomez.* 6. T. L. R., 26.

4.—*Attestation of document—effect of—as against attestor.*

Held that the attestation of a hypothecation deed by a party having a right to the hypotheca, will estop him from asserting his right as against those who may claim the property in virtue of any sale made in discharge of the debt secured by the hypothecation.

[*Murayas* vs. *Gomez* reported at 6. T. L. R., 26. distinguished.]

Kurien vs. *Pottha.* 12. T. L. R., 91.

5.—*Invalid document.*

No invalid document can supersede a prior valid document. *Govindan* vs. *Krishnan.* 9. T. L. R., 177.

DOCUMENTS.—(*Concluded*).

6.—*Lost or destroyed document—Secondary evidence of—whether admissible.*

See cases under Evidence Act, Sections 63, 64 and 65.

12. T. L. R., 1.

DURBAR PHYSICIAN.

When the evidence of the Physician to His Highness the Maha Rajah is required in criminal cases enquired into or tried at stations other than Trivandram, such evidence shall be taken on commission, under the provisions of the Criminal Procedure Code. *Criminal Circular, No.* 4 *of* 1061. 4. T. L. R., App. 10.

EASEMENT.

1.—*Right of way.*

Held that in order to entitle a party to a prescriptive right of way over another's land, it is not enough to prove that there was a lane on the land for more than twelve years, but the claimant of the right must show that the alleged right has been enjoyed by him as an easement and as of right for at least twelve years.

A license to use certain land as a path, given as a mere matter of favour and not as matter of grant or agreement imposing a restriction to the beneficial use of the land by its owner, cannot constitue an easement. *Valli* vs. *Narayanan.* 8. T. L. R., 114.

2.—*Limitation Regulation, Section* 26.

Plaintiffs sue to establish their right of easement to a water-course running through defendants' property, alleging that for over 40 years, they (plaintiffs) were using it.

The Lower Courts held that the claim was barred under Section 26 of Regulation II of 1062, as plaintiffs did not exercise their right within 2 years next preceding the date of suit. The plaintiffs appealed specially.

Held that easements are acquired by grant (express or implied) or by prescription; that Section 26 of the Limitation Regulation governs prescriptive easements; that the mere description of plaintiffs' right as an easement, does not warrant the presumption that what was claimed was a statutory right; that their allegation that for *over* 40 years they enjoyed the water-course, is more consistent with a case of easement by grant implied from long user; that to warrant the presumption of a grant, the plaintiffs must shew that their enjoyment commenced at such a distant time that direct evidence of the grant could not possibly be adduced, and continued up to the time of the obstruction complained of, and that

EASEMENT.—(*Concluded*).

the suit having been instituted within 12 years from the date of the alleged obstruction, the plaintiffs' suit must be heard and decided upon the merits. *Lakshmi* vs. *Kumaran*. 10. T. L. R., 67.

3.—*Rights on one's property—Proof—Purchaser's right to interfere with other's property. Injury to immoveable property—Limitation.*

Suit for a declaration of plaintiff's right *inter alia* to have a window re-opened. It was found that part of the window was situated upon plaintiff's portion of the house-site. The lower Courts dismissed the claim altogether, on grounds applicable to easements.

Held that the rights called easements are what the owner of one tenement possesses upon tenement belonging to another:

That where the owner of a portion of a house complains of an obstruction to the part of the window standing on his portion of the house-ground, he cannot be called upon to prove the exercise by him of the enjoyment of the light through the window within the time prescribed by law:

That a purchaser must take and enjoy the property, as he found it at the time of his purchase, and is not authorised to interfere with another's property on any plea of convenience to himself:

And that the obstruction of plaintiff's part of the window, being an injury to immoveable property, and the suit having been brought within 12 years of the obstruction, no question of limitation arises in regard to this part of plaintiff's claim. *Ganapathi Aiyan* vs. *Venkitanarayana Aiyan*. 10. T. L. R., 56.

ELAVAS.

1.—*Seshakar's claim to Karanaven's wife's property.*

No claim of Seshakars of an Elavan to the property of his wife was ever advanced and recognized. *Muthilichy* vs. *Iyappen*. 8. T. L. R., 154.

2.—*Descent of personal property among.*

The self-acquisition of a deceased man, among Elavas is divided according to the number of wives, and not according to the number of children. *Mathevi* vs. *Mathevan*. 9. T. L. R., 104.

3.—*Presumption from the fact of cohabitation—marriage—wife and children—inheritance.*

Held that in view of the special usages of the Elava community in the matter of marriages, the Courts are bound to presume from the fact of cohabitation, that such cohabitation was the result of marriage (such as it is), until the contrary is proved.

ELAVAS.—(*Concluded*).

Held further that the wife and children of an Elava are entitled to a moiety of his self-acquisitions, whether such acquisitions were made before or after the marriage. *Panchami* vs. *Aruvi.*
11. T. L. R., 167.

See also cases under Benami Bond. 10. T. L. R., 77.

ENDORSEMENT—*Payment of interest—acknowledgment.*
See case under Limitation, Section 20. 1. T. L. R., 67.

ENTICING AWAY A MARRIED WOMAN.
See cases under Penal Code, Section 498. 9. T. L. R., 124.

EQUITABLE MORTGAGE.

——*Creation of—doctrine inapplicable in Travancore.*

Held that in order to create a valid equitable mortgage there must be express intention to do so, which may either be by parol or by writing or partly by parol and partly by writing, or a presumption may arise from the mere delivery of the deeds.

Held also that the doctrine of equitable mortgage which is unknown to British India except in the Presidency towns is inapplicable to transactions between natives of this country. *Easwaran* vs. *Meeran.* 12. T. L. R., 177.

EQUITY OF REDEMPTION—*The effect of decree enforcing right of redemption.*

Held that a decree enforcing the right to redeem mortgaged property could not operate to merge the equity of redemption in the decree. *Mathu* vs. *Cochakko.* 5. T. L. R., 6.

ESCHEAT.

1.—The right of the Sirkar to take the property of a deceased person as an escheat arises only on the total failure of all heirs. *Kandan* vs. *Sirkar.* 2. T. L. R., 38.

2.—*Syrian Christian—Limitation—operation of with respect to public property and right.*

Held that there is no law restricting the general right of escheat possessed by the Sirkar, to take the estate of its Christian subjects dying intestate.

Held also that the Limitation Regulation does not extend to any public property or right and that it bars only the remedy but not the right. 4. T. L. R., 23.

ESTOPPEL.

1.—Mere silence for a term short of that prescribed by law for vindication of rights in the absence of special circumstances cannot legally operate as estoppel. *Padmanaban* vs. *Iyappen.*

5. T. L. R., 13.

2.—*Claim order.* An order passed on a claim petition, if not contested by a regular suit within one year from the date of the order, will operate as estoppel as against the parties thereto, in subsequent suits, even though they appear as defendants in such suits. *Mallan* vs. *Subban.* 9. T. L. R., 201.

3.—*Plea once successfully raised.* A party cannot be allowed to plead contrary to the pleas successfully urged by him in a previous litigation against his adversary. *Govindan* vs. *Krishnan.*

9. T. L. R., 177.

4.—*Claim contrary to a plea in a previous suit disallowed by Court.*

Held that the denial of a sale by the alleged vendee in a suit for recovery of the purchase money, did not estop the vendee from bringing a suit for recovery of the property when the decree in the previous suit negatived the plea therein raised.

Held further that permissive possession could not create a title. *Krishnan Potti* vs. *Sankarar Potti.* 11. T. L. R., 96.

5.—*Attestation of documents—effect of as against attestor.*

Held that the attestation of a hypothecation deed by a party having a right to the hypotheca, will estop him from asserting his right as against those who may claim the property, in virtue of any sale made in discharge of the debt secured by the hypothecation. *Muruyas* vs. *Gomez* reported at 6. T. L. R., page 26, wherein it was held that statements made by executants of documents cannot bind the witnesses to it, who are intended mainly to witness the fact of execution, distinguished. *Kurien* vs. *Pottha.*

12. T. L. R., 91.

See also case under "Chitty." 12. T. L. R., 151.

ESTOPPEL BY REPRESENTATION.

Compromise decree—distinction between estoppel and res-judicata.

Held that no decree based on a compromise could operate as *res-judicata* in a subsequent suit, as such a decree is not an adjudication on the merits, on the disputed points, under Section 9 of the C. P. C.

The effect of a false representation made by a party in a former litigation should be limited to the extent of prohibiting the

party making it from seeking, in a subsequent suit, to invalidate what has been, on the strength of it, done by the other party in respect of the subject matter of the litigation in the course of which that representation was made or which was determined in accordance with that representation. *The distinction between an estoppel by representation and res-judicata* is that "the latter prohibits the court from entering into an enquiry at all as to a matter already adjudicated upon, whilst the former prohibits the party, after the enquiry has already been entered upon, from proving anything which would contradict his own previous declarations or representations to the prejudice of another party, who has, relying upon those declarations or representations, altered his position; in other words, *res-judicata* prohibits an enquiry *in limine* whilst an estoppel is only a piece of evidence."

In the words of Lord Coke, "the plea of *res-judicata* proceeds upon the grounds of public policy properly so called, whilst an estoppel is simply an application of equitable principles between man and man, two individual parties to a litigation." *Kandan* vs. *Kali*. 12. T. L. R., 165.

ETTARTHAM. See "Jenmi and Kudyan." 1. T. L. R., 95.

EUROPEAN BRITISH SUBJECT—*accused—Procedure of ordinary magistrate.*

See Criminal Procedure Code, Section 335.

11. T. L. R., App. 1.

EVIDENCE.

A. Evidence in Civil Cases.
B. Evidence in Criminal Cases.
C. Evidence Act.

A. Evidence in Civil Cases.

1. Additional Evidence.
2. Admissibility of Documents.
3. Claim Based on Unstamped Deed.
4. Of Mala Fides.
5. Miscellaneous Documents.
   (*a*) Commissioner's Report.
   (*b*) Razinamah.
   (*c*) Unregistered Partition Deeds, &c.
   (*d*) Unregistered Letters.
   (*e*) Police Diaries.

EVIDENCE.—(*Continued*).

6. Mode of Dealing with Evidence.
7. Of Possession.
8. Secondary Evidence.
9. Presumptions.

A. Evidence in Civil Cases.

1. Additional Evidence.

1.—*In appeal.*

An Appellate Court is not authorized to try an appeal *de novo* and take the whole evidence. Section 339 of the Old Civil Procedure Code only provides for the taking of *additional* evidence, in appeal under certain circumstances, the Court in such cases invariably recording the reasons for such procedure. *Potha* vs. *Kivaridu.*

1. T. L. R., 79.

2.—*Sufficient evidence.*

Where a case has been fully investigated, but the Court of first instance has failed to record its opinion thereon, the Appellate Court ought to proceed to determine the case upon the evidence, if, in its opinion, there is sufficient material on the record for that purpose, and has no power to remand the case. *Bagavathi* vs. *Kalliani Amma.* 1. T. L. R., 108.

2. Admissibility of Documents.

——*Objections as to.*

Objections as to the admissibility of documents, ought to be taken at the earliest possible opportunity, namely, at the time of the documents being filed in evidence in the Court of first instance and the omission to do so, is tantamount to a waiver. The desirability of collecting evidence of a more independent character than that of mere information by the Revenue officials, before a property is seized as an escheat suggested. *Kandan* vs. *Sirkar.*

2. T. L. R., 38.

3. Claim Based on Unstamped Deeds.

Suit to recover amount due under an insufficiently stamped bill of exchange. Defendants admit the instrument, but plead that it forms part of a series of transactions, the adjustment of which must precede the claim brought forward by plaintiff. The Zillah Judge dismissed the suit finding that the instrument was insufficiently stamped and, therefore, could not be admitted in evidence.

Held that the admission of the instrument by defendants is legally sufficient to entitle the plaintiff to a decree, unless the defence is substantiated, their admission having rendered proof of the deed unnecessary.

Held also that Section 31 of the Stamp Regulation only prohibits reception in evidence of unstamped or *insufficiently* stamped documents; but does not invalidate claims evidenced by such documents. *Makoji* vs. *Haji Dawood.* 7. T. L. R., 162.

4. OF MALA FIDES.

——*Assignment of mortgage right.*

It is strong evidence of bad faith for an assignee of a mortgage right to take such an assignment without proper enquiry into the validity of the original charge or any investigation of the title of those actually in person. *Mathali* vs. *Avutherkuman.* 2. T. L. R., 6.

5. MISCELLANEOUS DOCUMENTS.

(*a*) *Commissioner's report.*

1.—According to Section 165 of the Civil Procedure Code the report of a Commissioner deputed to make a local enquiry, is clearly admissible in evidence and would ordinarily be the best material from which questions as to the amount of pattom, &c., of a land can be satisfactorily determined by a Court, provided his competency and trustworthiness are not brought into question. *Thevar Potti* vs. *Parappi.* 3. T. L. R., 4.

2.—The report of a Commissioner is not in itself legal evidence. It must, as other documents, be proved by independent evidence. *Vaidhyanadha Aiyar* vs. *Shankarar.* 3. T. L. R., 27.

(*b*). *Razinamah.*

——*Unregistered document—Admissibility of in evidence.*

Suit to enforce the terms of a Razinamah filed in a previous suit whereunder the parties therein came to certain terms in respect of certain immoveable property (the subject matter of that litigation) and withdrew from the suit.

Held that as the Razinamah related to the transfer of immovable property and no decree was passed thereupon, it is inadmissible in evidence unless registered.

Held also that the admission of a document requiring registration but not registered, may entitle a party to a decree, though the document be not produced in evidence; but in such cases, the

admission must leave nothing to be proved *aliunde* in respect of the material parts of the document. *Mani Aiyan* vs. *Padmanabhan.* 11. T. L. R., 99.

(c) *Unregistered partition deeds, &c.*

——*Statement before Magistrate—Admissibility of in evidence—Partition deed—whether compulsorily registrable—whether admissible in evidence if unregistered—Sections 9 and 10 of the Registration Regulation.*

Held that a statement given before a magistrate in a criminal case is admissible in evidence.

Held also that the registration of a partition deed is optional under Section 10 of the Registration Regulation. The fact that it relates to immoveable property would not bring it within Section 9 of that Regulation.

Held further, that an unregistered partition deed is admissible in evidence, though it may relate to immoveable property. *Subramanian* vs. *Manickavasakam.* 11. T. L. R., 172.

(d) *Unregistered letters.*

1.—*Admissibility in evidence of.*

Held that a letter produced to show that a Junior Member acted on behalf of the Tharawad, and the debt incurred by him was therefore chargeable thereon, though unregistered, is admissible in evidence. *Marthandan* vs. *Mathaven.* 12. T. L. R., 151.

2.—*Admissibility in evidence of unregistered letter promising to grant a sale of immoveable property.*

Held that a letter simply promising to execute a conveyance of immoveable property does not require registration, and though such letter has been under order of Civil Court compulsorily registered, it is admissible in evidence.

Held further that a document stamped under Sections 35 and 36 of the Stamp Regulation, is admissible in evidence under para 2 of the latter section though it was illegally stamped. *Manakavala Perumall Asari* vs. *Govinda Kymal.* 11. T. L. R., 131.

(e) *Police Diary.*

——*Admissibility in evidence of.*

Police diaries being confidential communications, cannot be treated as entries made in the discharge of professional duty, and are, therefore, not admissible in evidence. *Karayalan Pillai* vs. *Sheik Ammathu Rahuthar.* 9. T. L. R., 188.

EVIDENCE.—(*Continued.*)

6. MODE OF DEALING WITH EVIDENCE.

——*Taking of evidence on question of fact.*

If in the opinion of a Judge, a question of fact is immaterial for the decision of a case, the evidence bearing on it ought to be left unconsidered and the question undetermined. But if it is in any way material—though not directly—the evidence ought to be properly weighed and the conclusion distinctly recorded. *Varki* vs. *Cheriyan.* 9. T. L. R., 107.

7. OF POSSESSION.

——*Proof of title.*

In cases of disputed title, evidence of possession is often of the greatest importance. It is peculiarly necessary in such cases that the evidence of witnesses produced to prove possession should be carefully tested by the presiding Judge. *Pichamuttu* vs. *Kuttalam.* 1. T. L. R., 5

8. SECONDARY EVIDENCE.

1.—*Reception of.*

No secondary evidence of the contents of a document is receivable till the loss or destruction of the original is proved. *Krishnan* vs. *Iswaran.* 3. T. L. R., 2.

2.—*Production of—object of giving notice.*

The contention in this case was that the admission of secondary evidence, by the lower Court, to prove the deed relied on by the plaintiff, was wrong as no notice was served upon the defendant to produce the original.

Held that the object of giving a notice being to inform the other party that his adversary means to adduce secondary evidence, if the original document be not produced, the service of notice is not necessary, where the nature of the case set up in the pleadings, gives, as in this case, the requisite information.

The Courts have the power of dispensing with notice in any case in which they, for sufficient reason, find that the omission to serve the notice has not misled the party entitled to notice as to the proof he had to adduce. *Enakulamadi* vs. *Isaky.*

3. T. L. R., 54.

3.—*Order of Court—Admissibility of oral secondary evidence.*

Held that an order of Court can be proved only by the production and filing of duly authenticated and certified copy ; that oral

secondary evidence of a judicial order is not admissible under the Indian Evidence Act ; and that even if such evidence be admissible in this country, it cannot be received unless it is positively shown that the original order has been destroyed. *Mahomed* vs. *Srinivasa Charyar*. 9. T. L. R., 41.

9. PRESUMPTIONS.

1.—*Effect of Judgment.*

Held that judgments of Courts must be accepted as declaring facts as they truly are, and parties thereto are entitled to their legal rights flowing from such judgments, whatever may have been their averments or contentions in the litigations which resulted in those judgments. *Kuriyan* vs. *Kerulan.* 6. T. L. R., 78.

2.—*Possession of counterfeit coins.*

Held that such possession *prima facie* raises a presumption of guilty knowledge and it is for the defence to rebut such presumption by any admissible proofs. 2. T. L. R., App. 17.

3.—*Possession and disposal of stolen property.*

The presumption arising from the possession and disposal of property recently stolen, is that the possessor or disposer is the thief. *Sirkar* vs. *Ussan.* 9. T. L. R., 118.

4.—*Public documents.*

Held that public convenience and interest require that every presumption should be made in favour of the genuineness of public documents ; that those who impeach them must substantiate their plea ; and that every public document duly filed in a Court of justice, under the express provisions of law, must be presumed to be genuine until the contrary is proved. *Sridharan Muttathu* vs. *Raman.* 7. T. L. R., 18.

5.—*Entries in public accounts—Burden of proof as to fraud.*

The ordinary presumption in the case of entries in public accounts is that they were properly made. The burden of proving that they are the result of misrepresentation and fraud, is on those who take exception to them. *Karayalan Pillai* vs. *Sheik Ammuthu Rahuthar.* 9. T. L. R., 188.

B. EVIDENCE IN CRIMINAL CASES.

1. ACCOMPLICE.
2. APPROVER.
3. CHARACTER.

EVIDENCE.—(*Continued.*)

4. Confessions.
5. Depositions.
6. Experts.
7. Mode of recording judgments and depositions.
8. Production of evidence.
10. Retracted evidence.

1. Accomplice.

1.—*Conviction.*

Held that the examination of an accused person as witness, though perhaps, inexpedient, is not illegal; that an accused person is an admissible witness, although he may not have received a pardon; and that a conviction, based on the uncorroborated testimony of an accomplice is not illegal, but that great caution should be exercised in weighing such evidence. 5. T. L. R., App. 1.

2.—*Admissibility of.*

The law does not declare the evidence of an accomplice inadmissible; but only requires some corroboration to base a conviction thereon. *Sirkar* vs. *Chembakakutti.* 9. T. L. R., 37.

2.—Approver.

——A conviction based upon the sole testimony of an approver though not illegal, is unsafe, unless corroborated by other independent evidence. *Sirkar* vs. *Miran Pillay.* 5. T. L. R., App. 13.

3. Character.

1.—*Previous character.*

No evidence ought to be taken regarding previous bad character unless the prisoners chose to call evidence regarding their good character. 1. T. L. R., App. 2.

2.—*As to bad character of accused—Taking of evidence—Hearsay reports.*

Unless a prisoner adduces evidence of good character no evidence of his bad character can be received. Mere hearsay reports should not be used as evidence in any judicial proceedings and the Magistrate should not allow himself to be influenced by such reports in his judgment. 10. T. L. R., App. 37.

3.—*Held* that it is illegal to admit evidence of crime A to prove the cognate but unconnected crime B, as the reception of such evidence would be to violate the principle of law that no evidence of the bad character of the accused shall be received on behalf of the

prosecution, except in reply to the evidence of good character that may be adduced. *Sirkar* vs. *Padmanabha Pillai.* 11. T. L. R., 52.

4. CONFESSIONS.

(*a*) GENERAL.

(*b*) CONFESSION UNDER THREAT OR PRESSURE.

(*c*) CONFESSION TO POLICE OFFICER.

(*d*) CONFESSIONS OF PRISONERS TRIED JOINTLY.

(*a*) GENERAL.

1.—*Recording of, at night, not advisable.*

CRIMINAL CIRCULAR No. 9 OF 1061. 4. T. L. R., App. 12.

2.—*Its effect as evidence.*

Held that a confession is always admissible in evidence as original evidence against the person who makes it; and, if there is no reason to suspect its voluntary character, it is, without any corroboration, sufficient proof to support a conviction. *Sirkar* vs. *Narayanen and another.* 7. T. L. R., 97.

(*b*) CONFESSION UNDER THREAT OR PRESSURE.

Held that a confession which is not the result of ill-treatment, coercion, or other unfair means, can be received in evidence and acted upon in so far as it is corroborated by other and independent evidence of circumstances. *Sirkar* vs. *Velayadhan.* 2. T. L. R., 83.

(*c*) CONFESSION TO POLICE OFFICER.

Confessions made before a Police Inspector cannot be used in evidence against accused persons and it is irregular to record such confessions. 10. T. L. R., App. 23.

(*d*) CONFESSIONS OF PRISONERS TRIED JOINTLY.

1.—*Confession of co-accused whether admissible in evidence,* SECTION 30. *Indian Evidence Act.*

Held that the confession of a co-accused is not admissible in evidence against another unless it be the statement of an approver; and that under Section 30 of the Indian Evidence Act, a Court can only consider the statements (of co-accuseds) in weighing the evidence before it. 8. T. L. R., App. 32.

2.—*Section* 30, *Indian Evidence Act.*

Held that Section 30, Indian Evidence Act, has not been adopted as law in Travancore, and that confessions are not evidence against any but the prisoners making them. 8. T. L. R., App. 47.

EVIDENCE.—(*Continued.*)

3.—*Evidence of co-accused.*

The evidence of an accused person implicating his co-accused, is not admissible as evidence against the latter.

10. T. L. R., App. 23.

5.—DEPOSITIONS IN DEPARTMENTAL ENQUIRY.

1.—*Statements of witnesses and explanations recorded in departmental enquiry—whether and how utilisable in criminal cases.*

Held that an explanation or statement given by an officer, before his superior, at a preliminary departmental enquiry, cannot under the general law of evidence, be excluded from a judicial enquiry; and that such statements would constitute evidence against the deponent in a judicial enquiry, unless rebutted or explained away, or shown to be involuntarily given or incorrectly recorded.

Held also that the lower Court's refusal to allow the prosecution to use the previous statements of witnesses, given at the preliminary departmental enquiry, for the purpose of contradicting their evidence at the trial of the case, was irregular.

11. T. L. R., App. 35.

2.—*Held* that the statements of witnesses, recorded in a departmental enquiry, are inadmissible as *independent* evidence against the accused, when such statements were not given on oath, and were recorded behind the accused; that these statements, however, may be used for purposes of contradiction or corroboration, in order to enable the Judge to determine the credit due to the witness' statement recorded at the trial. *Sirkar* vs. *Padmanaba Pillai.* 11. T. L. R., 52.

6. EXPERTS.

1.—*Counterfeit coins.*

Held that the evidence of an expert should have been taken to prove the chuckrams produced in Court were false and counterfeit. *Sankaran* vs. *Sirkar.* 12. T. L. R., App. 26.

7. MODE OF RECORDING JUDGMENTS AND DEPOSITIONS.

1.—Session Judges and 1st class Magistrates are requested to bring to the notice of the High Court omissions on the part of the subordinate magistracy to record notes of evidence and judgments in their own hand.

CRIMINAL CIRCULAR No. 14 of 1057. 1. T. L. R., 39.

EVIDENCE.—(*Continued.*)

2.—Whenever a Magistrate does not either record the evidence himself or make a memorandum of the substance of evidence given before him, he must state in the diary the reasons for his inability to do so. 9. T. L. R., App. 18.

8. PRODUCTION OF EVIDENCE.

——*Warrant cases—Enquiry by police.*

In warrant cases, the Magistrates would do well to invoke the aid of the police in collecting evidence especially where the complainants are poor men unable to engage the services of lawyers and private detectives. The duty of producing evidence in support of complaints of the commission of serious offences should not be wholly thrown upon private complainants. *Sirkar* vs. *Baghyam.* 10. T. L. R., 87.

9. RETRACTED EVIDENCE.

——*Use of—Section 242 Criminal Procedure Code—Order for fresh trial—Inexpediency of.*

Where, on a charge of culpable homicide not amounting to murder, the Sessions Judge has used, under the discretion vested in him by Section 242 Criminal Procedure Code, the evidence given by the prosecution witnesses before the committing Magistrate, but retracted subsequently before the Sessions Judge, for convicting the prisoners of the offence charged:

Held following the decisions reported in Weir, p. 940 and in VI C. L. R. p. 53, that to rule that retracted evidence shall *never* be used for purposes of conviction would be to repeal Section 242 of the Criminal Procedure Code, which no Court of law can do; that considering the strong suspicion that attaches to the veracity of witnesses who retract their sworn statements, it is nothing but right that the Court which is called upon to decide on retracted evidence should see whether it has sufficient grounds to believe such statements as *true* in preference to solemn declarations made before itself.

Held also that where, on a grave charge, all the prosecution witnesses have retracted their statements made before the committing Magistrate, it is inexpedient to order a fresh trial.

12. T. L. R., App. 33.

C. EVIDENCE ACT.

SECTION 30. See cases under "Confessions." 8. T. L. R., App. 32. and 8. T. L. R., App. 37.

EVIDENCE ACT.—(*Continued.*)

SECTIONS 63, 64 and 65.

SEE CASES UNDER—EVIDENCE IN CIVIL CASES—SECONDARY EVIDENCE.

1.—*Mortgage—Acknowledgment.*

Held that under Section 19 of the Limitation Regulation oral evidence of the contents of a deed relied on as an acknowledgment to save a suit for redemption of a mortgage, from the limitation bar, is inadmissible. *Parvati* vs. *Krishnan.* 11. T. L. R., 159.

2—*Abstract of deposition in a Judgment.*

Held that an abstract of a deposition given in a judgment is not an acknowledgment under Section 19 of the Limitation Regulation; that under the provisions of Sections 64 and 65 of the Indian Evidence Act, secondary evidence of a lost or destroyed acknowledgment is admissible, but that such abstract does not fall under any of the clauses of Section 63 of the Evidence Act so as to be admissible as secondary evidence as to the contents of the deposition. *Anandu* vs. *Bhaghavati.* 12. T. L R., 1.

SECTION 92.

1.—*Admissibility in evidence of subsequent oral contract.*

The Evidence Act not being the law of this state, the exclusion of oral evidence of a subsequent contract (under the new provision introduced in Section 92 of the said Act) varying or modifying the terms of a registered contract, cannot be acted upon.

Held that a distinct subsequent oral agreement is legally sufficient to modify the terms of a written contract. *Kunjan* vs *Varki.* 6. T. L. R., 97.

2.—*Admissibility of oral evidence to explain terms of a written contract.*

Held that when the terms of a contract reduced to writing are not clear, such as a mortgage providing ' that the property mortgaged shall be redelivered whenever the mortgagor pays off the debt', an oral agreement may be permitted to be proved to explain the terms of the contract provided the same is not inconsistent with the actual terms of the contract. *Aruseph* vs. *Thomma.* 5. T. L. R., 124.

3.—*Admission of oral evidence contrary to compact of parties.*

Where the law of evidence does not require a fact to be evidenced by writing alone, oral evidence in proof thereof is legally admissible, although the compact of the parties made it an express condition that written vouchers should be taken to evidence such fact. \ *Usman* vs. *Aiyappan.* 11. T. L. R., 41.

\ See 116 - 19 p 47

EVIDENCE ACT.—(*Concluded*).

SECTION 146.

Imputation against witness' character in cross-examination—Action for damages for slander.

Held that to vindicate a witness' character against imputations to which a question put in cross-examination might indirectly give rise, an action for damages is unnecessary; and that the paramount interest of the administration of justice requires that the parties should have the absolute right of cross-examining their adversary's witnesses subject only to the control of the presiding Judge.
Narayanar vs. *Krishnan*. 9. T. L. R., 13.

EXECUTION OF DECREE.

1. GENERAL CASES.
2. LIABILITY FOR WRONGFUL EXECUTION.
3. TRANSFER OF DECREES FOR EXECUTION AND POWERS OF COURT AS TO EXECUTION OUTSIDE JURISDICTION.
4. EXECUTION BY AND AGAINST REPRESENTATIVES.
5. JOINT DECREE, EXECUTION OF AND LIABILITY UNDER.

See also cases under "Limitation Art. 153 *step in aid of execution.*"
See also cases under Civil Procedure Code, Section 250.
11. T. L. R., 27 and 1. T. L. R., 65.
SECTION 584. 12. T. L. R., 155.

——*Satisfaction out of Court.* See Penal Code, Sections 193, 210 and 511. 11. T. L. R., 46.

1. GENERAL CASES.

1.—*Against Sirkar.* The Court to which application is therefor should ordinarily issue notice to Government demanding payment of the money or other satisfaction of the decree within a reasonable time. If, after the time fixed in the notice, the decree remains unsatisfied, the Court should report the matter to the High Court.

Civil Circular No. 4 of 1058. 2. T. L. R., App. 8.

2.—*Execution of—Judgment-creditor's right to proceed both against Judgment-debtor and his property.*

Held that under the Civil Procedure Code (Travancore) a Judgment-creditor is entitled to proceed both against the property and the person of the Judgment-debtors.

Held also that there is no provision in the Code which authorizes the Court executing the decree, to limit the execution to the

property or to the person of the Judgment-debtors. *Kulathoor Aiyen* vs. *Isman.* 5. T. L. R., App. 8.

3.—*Rival decree-holders.*

Held that if the attachments in both cases have been simultaneous, both the decree-holders are entitled to be paid rateably. *Kesaven* vs. *Muthukrishnan.* 5. T. L. R., 17.

4.—*Application for execution of—Limitation.*

Held that no application should legally be treated as disposed of until all that could be done upon it has been done, or it has been rejected by a special order of Court. *Moothu Pillai* vs. *Chitambaram.* 8. T. L. R., 156.

5.—*Barred decree—application for execution of. Effect of order for attachment of property.*

An application for execution of a decree was made more than 3 years after the last application for the same, but within 3 years from the date of the order for warrant, passed upon the last application. Notice was issued to the defendant to show cause why the application should not be granted. No objection having been taken by the defendant, his property was attached, though not sold in consequence of claims preferred by third parties. More than a year after the execution of the warrant of attachment, the defendant filed an objection that the decree was barred at the time of the last application for execution.

Held that the plea of bar was too late, that the defendant not having appealed against the order for attachment, it had become final, and that the said order, whether right or wrong, determined that the decree was not barred. 8. T. L. R., App. 41.

6.—*Effect of order rejecting application for execution.*

Held that an order rejecting an application for execution precludes the party from making a further application, unless and until that order is legally set aside. *Paramasivan* vs. *Venkata Row.* 9. T. L. R., 113.

7.—*Attachment of hypothecation lien by hypothecatee's creditor—Effect of decree obtained by hypothecatee—C. P. C., S.* 276.

Where a Judgment-creditor (plaintiff) attached and purchased a hypothecation-lien held by his debtors after being, on his own motion, made a party to a decree that the debtors themselves had obtained against their hypothecator, prior to plaintiff's attachment,

moved for execution of the latter decree against their hypothecators of plaintiff's decree-debtors:

Held that when plaintiff's decree-debtors obtained the decree against their hypothecators, the former's rights under the hypothecation became merged in the decree, and plaintiff's attachment of the hypotheca was null and void, and the making him a party to the decree was wrong.

Held also that the execution of the whole decree still remains with the hypothecatees (the defendants). *Thankammal* vs. *Pooppillai.* 12. T. L. R., 183.

2. LIABILITY FOR WRONGFUL EXECUTION.

1.—*Execution of decree—fresh suit—appeal.*

If, in execution of a decree for delivery of property, the Judgment-debtor is dispossessed of property not covered by such decree, he may bring a regular suit to recover such property. An Appellate Court is incompetent to interfere with any portion of the original decree not appealed against. *Chempakakutti* vs. *Kumaran.* 3. T. L. R., 33.

2.—*Order on claim petition—operation of, as against property other than that attached—execution Court's incompetency to declare Tarawad property not liable for debt of Junior Members.*

In execution of a money-decree against some junior members of a Tarawad, certain property belonging thereto was attached, whereon the Karanavan and others preferred a claim which was allowed on the ground that Tarawad property was not liable for the debt. The decree was subsequently assigned, and the assignee attached certain other properties belonging to the Tarawad, which were—no claim having been preferred—sold, and purchased by third parties. The suit is brought to set aside this sale. The Munsiff dismissed the suit, but the Zillah Judge held that the order on the claim petition debarred execution of the decree against the Tarawad properties.

Held that the order on the claim petition itself was irregular, an execution Court being incompetent to determine the scope or binding effect of a decree.

Held also that an order on a claim petition will bind and affect only parties thereto and the subject matter thereof; the sole effect of such an order being simply to preclude the Judgment-creditor from again attaching the property released from attachment thereby, without establishing its liability to be sold for the decree-debt, by a regular suit. *Nelacandan* vs. *Kesavan.* 10. T. L. R., 64.

EXECUTION OF DECREE.—(*Continued*).

3. TRANSFER OF AS TO EXECUTION AND POWERS OF COURT AS TO EXECUTION OUTSIDE JURISDICTION.

1.—*Rules to be observed in sending decrees for execution in British India. See "Civil Circular No.* 22 *of* 1061."

4. T. L. R., App. 30.

2.—*Execution outside Jurisdiction.*

Held that no Court is ordinarily competent to execute its process outside the limits of its local jurisdiction, and the only way in which it could invoke the assistance of the Court competent to execute the process, is by transferring the execution of the decree itself to such latter Court in the mode laid down in Sections 268 and 271 of the old C. P. C. *Haji Adam* vs. *Mammathu.*

6. T. L. R., App. 2.

3.—*Question affecting validity of decree—which Court is competent to decide.*

Held by a FULL BENCH that the Court which passed the decree and not the Court to which it has been transferred for execution, is competent to entertain and determine a question affecting the validity of such decree at the date of such transfer. *Sivarama Aiyan* vs. *Shangaranarayana Aiyan.* 8. T. L. R., App. 61.

4.—*Jurisdiction of executing Court to adjudicate on question of expenses incidental to execution—Sections* 220 *and* 238 *C. P. C.*

Held that, under Section 220 of the C. P. C., a certificate of non-satisfaction of a decree, sent for execution to another Court, is conclusive proof of the truth or genuineness of the decree, of the correctness of the copy thereof transmitted for execution and of the Jurisdiction of the Court that passed the decree to pass it; but nothing in the Section prohibits the Court executing a decree to ascertain whether the expenses incidental to execution of the decree have been correctly calculated or charged to the Judgment-debtor.

Held further that Section 238 which must be taken to apply to, and govern the procedure of, the Court which passed the decree, when executing such decree, and the Court to which the decree is sent for execution, renders it competent for the Court executing the decree to adjudicate on a question of the amount of expenses incidental to execution and sought to be recovered from the Judgment-debtor especially where the question was not raised in, and determined by, the Court that passed the decree. *Paliathu Achan* vs. *Varki.* 12. T. L. R., 39.

EXECUTION OF DECREE.—(*Continued*).

4. EXECUTION BY AND AGAINST REPRESENTATIVES.

1.—*Representation in execution, of deceased party—Section 227 C. P. C. Defect of party—Curing of, in execution.*

A, defendant, died during the pendency of a suit, and, on plaintiff's application, B was joined as party in A's place. After decree, plaintiff discovered that B was not A's legal representative, and applied to the Court to join C (appellant) as such representative. The Court granted the permission under Section 227 C.P. C.

Held that Section 227 provides only for representation, in execution, of Judgment-debtors who die after decree; and that if plaintiff, by mistake or oversight, failed to obtain a decree against the right party, the mistake cannot be cured, in execution.
Easwaran vs. *Chempakaraman*. 9. T. L. R., 136.

2.—*Minors—Limitation Regulation II of* 1062, *Section* 8—*Regulation V of* 1068, *Section* 6—*Representation by guardian—Effect of.*
A. S. 153 *of* 1068 *followed.*

Where the minor sons of a decree-holder succeeded him before the expiry of the 12 years prescribed by Section 223 C. P. C. but the decree was sought to be executed by them only after the lapse of such period,

Held following the ruling in A. S. 153 of 1068 (reported at 11 T. L. R., 11) that the provisions of the Limitation Regulation being a part of the law of procedure, govern also the provisions of the C. P. C.

That Section 8 of the Limitation Regulation II of 1062 as amended by Section 6 of Regulation V of 1068, has suspended the operation of Limitation as against the minors during their minority. And that the fact of the minors being represented by their guardian, did not deprive them of the privilege specially conferred on them by law. *Kuttipparu* vs. *Kali*. 12. T. L. R., 149.

5. JOINT-DECREE: EXECUTION OF AND LIABILITY UNDER.

——*Competency of one of several plaintiffs to execute his portion of a decree—Refusal to execute decree against sureties—appeal.*

Held that inasmuch as the decree (sought to be executed) has awarded separate shares to each of the plaintiffs and the interest of the plaintiffs are not joint, any one of them is competent to execute the portion of the decree that relates to him separately.

Held also that an appeal lies against the order of the Zillah Judge refusing to execute a decree against sureties (who in consideration of the stay of execution of a decree pending the disposal

EXECUTION OF DECREE.—(*Concluded*).

of the appeal preferred against it) have made themselves responsible for the amount of the Judgment-debt. *Kathija Oomma* vs. *Vappukkutti.* 5. T. L. R., App. 7.

EX-PARTE CASES.

——*Not to be treated as contested cases.*

When ex-parte suits are disposed of, they should not be entered in the periodical returns under "contested cases." It must be clearly borne in mind that, for statistical purposes, all cases in which the defendant does not make any defence, must be taken to be uncontested cases.

Civil Circular No. 3 of 1061. 4. T. L. R., App. 17.

See also cases under C. P. C. SECTION 95. 3. T. L. R., 42.
SECTION 553. 2. T. L. R., 29.

See also cases under "Appeal—ex-parte cases."
3. T. L. R., App. 42.
3. T. L. R., App. 44.

EX-PARTE DECREE.

1.— *Cancelment of—summary application.*

Held that under the Civil Procedure Code, a party cannot by a summary application seek cancelment of an *ex-parte* decree passed in an appeal and confirmed in special appeal at the instance of his co-respondents. 8. T. L. R., App. 39.

2.—*Remedy in respect of.*

Held inter alia that the remedy for a party injured by an *ex-parte* decree, is by an application to the Court that passed it, to set it aside, and not by a fresh litigation. The expiry of the period allowed for making such an application, will not warrant the institution of a regular suit. *Varki* vs. *Kumaran.* 10. T. L. R., 4.

EX-PARTE JUDGMENTS.

1.—*Held* that there is no special appeal against an order of the Zillah Court setting aside an *ex-parte* Judgment.

1. T. L. R., App. 8.

2.—*Effect of.*

Held that an ex-parte Judgment is good for purposes of *res-judicata* provided the parties are the same. *Veluammal* vs. *Subramania Aiyan.* 6. T. L. R., 19.

EXTRADITION.

——*Forfeiture of bail given by foreigners.*

No bail given by any person not possessing property (moveable or immoveable in Travancore), shall, as a rule, be accepted. The British Law does not recognize extradition in such cases.

12. T. L. R., App. 3.

FALSE PERSONATION.

See Penal Code, Section 170.

FEE.

1.—*Amount of, to be levied on petitions praying for decrees in pursuance to Razis and some other petitions.*

In supersession of the late Sadr Court's Civil Circular, the High Court direct that, in future, the following petitions be taxed with a Court fee of 8 annas each.

(*a*) Petitions praying for decrees in pursuance to Razinamahs.

(*b*) Petitions praying the Courts to strike off suits from file.

(*c*) Petitions praying the Courts to strike off execution cases from file.

Civil Circular No. 6 *of* 1061. 4. T. L. R., App. 18.

2.—Attachment fees should be levied in cases in which the amount in deposit in the hands of a Government officer, is attached. Fees must be levied on applications made by Government for the recovery of institution fees.

Process fee for attachment must be levied on the whole amount when the decree is for the payment of an amount embracing several claims, under one of which only, certain properties are sought to be attached.

——*Civil Circular No.* 7 *of* 1061. 4. T. L. R., App. 19.

——See also cases under "Vakil's fees."

1. T. L. R., App. 19 and 1. T. L. R., 99.

FEMALES.

1.—*Rigorous imprisonment.*

Females are liable to rigorous imprisonment. It does not necessarily include fettering. 3. T. L. R., App. 32.

2.—*Held* that under the rulings of this Court, females are not exempt from rigorous imprisonment and that, therefore, the award

FEMALES.—(*Concluded*).

of simple imprisonment to a woman convicted under Section 392 of the Penal Code is illegal. 10. T. L. R., App. 41.

FINE.

See cases under "Sentence."

——*Order of, against subordinates, by Munsiffs—appeal to Zillah Court.*

No appeal lies to the Zillah Judges against the orders of Munsiffs fining their subordinates.

Civil Circular No. 4 of 1061. 4. T. L. R., App. 18.

FORCIBLE ENTRY INTO A TEMPLE.

See Cr. P. C., Section 130. 8. T. L. R., App., 19.

FOREST REGULATION.

See "Regulation II of 1068."

FORFEITURE OF TENANCY.

See "Jenmi and Kudyan."

FORGED DOCUMENT.

——*Not filed in Court—sanction for prosecution.*

Held that a Magistrate is competent to entertain a complaint in respect of a document fabricated for purposes of evidence, without the previous sanction of a Court, where the document has not been filed in any Court. 9. T. L. R., App. 30.

FORGERY.

——*Prosecution for. Sanction of executive officer.*

Held that no sanction of the executive officer before whom a document is produced in a departmental enquiry is necessary for the prosecution on a charge of forgery in respect of such document. 8. T. L. R., App. 17.

FORGERY AND CHEATING.

See "Penal Code Sections 419 and 465." 8. T. L. R., App. 44.

FRACTIONS OF A DAY.

——In calculating limitation, the day on which the cause of action arose is excluded, as the law does not take notice of fractions of a day. *Raman* vs. *Raman*. 1. T. L. R., 76.

FRAUD.

See case under "Consideration." 1. T. L. R., 81.

See also cases under "Oath." 1. T. L. R., 112.

GIFT.

See cases under " Malabar Brahmins." 12. T. L. R., 157.

GOSHA LADY.

——Appearance in public Court as witness—exemption from —examination on commission.

See Cr. P. C., Section 70. 12. T. L. R., App. 27.

GOVERNMENT.

——*Non-liability of—acts of public servants.*

The Government is not liable for wrongs done by public servants appointed by them. The Government do not in any way guarantee to the public or any member of it, the fidelity of their servants ; the duties of their servants are defined by the law; that they are not guided in their actions by the will of the Government ; and that where their wrongful acts are not satisfied by the Government, they alone and not the Government, are liable for them. *Sirkar* vs. *Narayanan.* 1. T. L. R., 14.

GUARDIANSHIP.

——See cases under Penal Code, Section 361.

6. T. L. R., App. 6.

——See also " Hindu Law—guardian." 6. T. L. R., 37.

HEREDITARY OFFICE.

——*Suit in respect of—Prescriptive title.*

A title by prescription, in the case of an office, is a title acquired by a long and continuous exercise or performance of the functions of that office and the enjoyment of the emoluments or perquisites appertaining thereto without any interruption, as a matter of right and as an exclusive holder thereof. *Vasudevan. Elayathu* vs. *Sankaran.*

12. T. L. R., 93.

HINDU LAW.

(1) Alienation.
(2) Debts.
(3) Guardian.
(4) Inheritance and succession.
(5) Joint family.
(6) Maintenance.
(7) Marriage and sonship.
(8) Partition.

HINDU LAW.—(*Continued*).

(9) Wills.

(10) Woman's estate.

See also "Burden of Proof-Benami—Transactions". 9. T. L. R., 201.

I. Alienation.

1.—*Sale by a father of ancestral property—son's right to set aside.*

Suit by a Hindu to set aside a sale by his father, of ancestral property, on the ground that the alienation was fraudulent and without consideration.

It was found as a fact that the sale was for valuable consideration and that the bulk of the purchase-money was applied to discharge a prior mortgage lien on the property, though there was no affirmative proof as to the application of the balance of purchase-money.

Held (1) that in cases of alienation by father, of family property, in which the minor sons, under his guardianship are interested, the presumption is that such alienation was made by the father for the benefit of the whole family and as their representative, unless the contrary is shown by the sons seeking to impeach the alienation. (2) That a sale in such cases cannot be set aside simply because the purchaser is, after the lapse of several years, unable to give satisfactory evidence that a portion of the purchase-money was needed for family purposes. *Sankaranarayana Aiyan* vs. *Subramania Aiyan.* 2. T. L. R., 44.

2.—*Power of alienation by a husband—Right of Hindu wife.*

A Hindu wife has no right to question the power of her husband to alienate his property. She can only claim maintenance. *Arumugam* vs. *Avayavookam.* 3. T. L. R., 38.

3.—*Conditional sale.*

The question was whether a conditional sale of property is of the nature of a penalty merely, or a contract strictly enforceable by law. *Held* that the Hindu Law, which ought to be the guide in such matters, always recognised and gave effect to such sales; that this principle of Hindu Law has not been set aside by express legislation and that full effect must be given to such contracts of sale, following the decisions of this Court and Courts in British India. *Velayudaperumal Pillay* vs. *Kunjumytheen.* 3. T. L. R., 9.

II. Debts.

1.—*Undivided members of Makkatayam Hindu family—Manager—Onus of proof—Creditor and Debtor—Liability.*

HINDU LAW.—(*Continued*).

A and B are paternal uncle and nephew, respectively, of an undivided Makkatayam Hindu family. A borrows some money from C on the mortgage of common property for the common benefit of himself and B (his nephew), and he does so in the capacity of manager of the family. C, therefore, seeks to hold B (personally) and his interest in the mortgaged property answerable for his debt.

Held that, under the Mitakshara Law, except in the case of father and son, the *onus* of proving that a debt borrowed by the manager of a joint Hindu family is a family debt is upon the creditor.

That the debt being a family debt, A and B are equally liable to pay the same, and their common property, in consequence, is answerable for it.

That in all cases like the present, the personal liability of the representative debtor extends only to the extent of the assets of the common family in his hands. *Narasinga Pye* vs. *Sreenivasa Kamathee.* 7. T. L. R., 1.

2.—*Liability of family Estate. Payment of debts or advance of money by co-sharer—Effect of.*

The fact that a co-sharer in possession of family property, pays family debt or advances money for the purpose of the family, does not create a lien as against other members of that family or their shares in the family property. *Pothen* vs. *Mathu.* 8. T. L. R., 153.

3.—*Liability of co-parcener's share in undivided property for personal debts—creditor's right to proceed against debtor's share.*

Held that the Hindu Law does not recognise individual rights in undivided property whether during or after the life of a member of the family, but if equitable considerations founded upon the right of creditors and purchasers are sufficient to introduce an exception, it is nothing but reasonable that the creditor should have the same rights after the death of his debtor as he had during his life-time.

Held also that the share of a co-parcener in undivided ancestral or joint property is liable even after his death for his personal debts. *Venkittarama Aiyangar* vs. *Pappu Aiyen.* 5. T. L. R., 112.

4.—*Liability of a Hindu to discharge his father's debt.*

No Hindu can escape from the liability to pay his father's debt, unless he proves that it was contracted for immoral or illegal purposes. *Raman* vs. *Ananthan.* 9. T. L. R., 49.

HINDU LAW.—(*Continued*).

5.—*Minor son's property—Mother's right to dispose of. Validity of such disposition to the extent of the father's debt discharged thereby.*

Suit on behalf of a minor to set aside a sale of property belonging to the minor, granted by his mother.

Held that the sale having been granted by plaintiff's mother, not as his guardian and on his behalf, but conveying her own rights in the property, is invalid as against him.

Held also that part of the purchase-money having been applied to discharge a Judgment-debt of plaintiff's father—the character of which debt is unimpeached—the defendants (purchasers) have, in equity, a right to retain possession of the property until plaintiff refunds to them that amount. *Govindan* vs. *Muthu Pillai.*

10. T. L. R., 28.

6.—*Benares school—sale of estate in execution of decree upon father's debt—Liability of son's shares except where debt was incurred for illegal or immoral purposes—Burden of Proof—Presumption as to interest sold.*

Under the Hindu Law of the Benares school, sons cannot seek to set aside a sale of joint family property, held in execution of a money decree against their father, although they may not have been parties to the decree or the execution proceedings, unless they can show that the debt whereon the decree was obtained, was contracted for illegal or immoral purposes.

The purchaser is not bound, as against sons impugning the sale, to show that he specially bargained for and obtained the interests of the sons also, in execution of the decree against their father.

The presumption arising from the representative character and position of the father and his competency to charge also the co-parcenary interests of his sons in the estate with his proper debts, is that the sale in execution passed to the purchaser the entire estate sold and not the debtor's share alone.

Such presumption may be rebutted by proof of special circumstances tending to establish that the debtor's interest alone in the estate was intended to be sold.

The use of the words "right, title and interest of the debtor" in the sale-proclamation or certificate is insufficient to raise the counter presumption, as they must be construed to mean the right, title and interest which the Judgment-debtor was, with reference to the nature of the debt, capable of conveying in the property attached for sale. *Yegnasubramanya Aiyan* vs. *Sankaranarayana Dikshathar.*

11. T. L. R., 18.

HINDU LAW.—(*Continued*).

III. Guardian.

——*Guardianship of minor—Mother's right to sue as guardian on behalf of her minor son—Incompetency of a Hindu to make a will.*

A, the mother of B, a minor, sues C, as the guardian of B, to recover money due to D, B's deceased father. C contends that inasmuch as D has appointed E (D's divided brother) as guardian of B, under a will, A is incompetent to sue as guardian of her minor son B.

Held that there is no positive rule in favour of either father, mother, or any other relation being the guardian of the minors: and the Courts have to consult (in cases of disputes) the general principles of law in respect of the power of parents over their children, and decide which of them should be the guardian.

That the Hindu Law recognises the disposing power (by marriage) of the father over his children and does not allow the mother to question the former's act. As such, it would be a strange anomaly if it disregards his wishes in the matter of guardianship.

That the Courts, as administrators of Law and representatives of the sovereign (the only guardian of minors under the positive rule of Hindu Law) cannot, in the absence of strong and special reasons, disregard the wishes of the father as to who should be the guardian of his minor sons.

That the fact that his wishes are expressed in a will does not warrant their rejection from the consideration of the Court.

That when the guardian nominated is incapable of managing the property or is guilty of dishonesty or negligence, the mother, as the person most interested in the welfare of her minor son, is allowed to move the Courts for the removal of such guardian, but so long as such guardian is not removed, the Courts cannot but recognise him as the person competent to represent the minor's estate. *Vengammal* vs. *Mathoo.* 6. T. L. R., 123.

IV. Inheritance and succession.

1.—*Right of Hindu widow.*

It is a clear proposition of Hindu Law that when a man dies possessed of property, leaving sons, his widow does not succeed. *Theraviem Pillai* vs. *Subramania Pillai.* 3. T. L. R., 50.

2.—*Makkathayam man and Marumakkathayam woman—Marriage between—Legality of Succession.*

HINDU LAW.—(*Continued*).

The law of succession applicable to the case of a Makkathayam Vellala man married to a Marumakkathayam Vellala woman, according to the custom of the husband's caste, is the ordinary Hindu Law, the marriage being legal, since it is permitted by the Hindu Law and the general custom of the castes of the husband and wife. *Andy* vs. *Chuppu.* 9. T. L. R., 21.

3.—*Illegitimate son—son of concubine—son by Marumakkathayam woman.*

The question was whether the illegitimate son of a Makkathayam Vellala by a concubine, who is a Nanjanad Marumakkathayam Vellala woman, is entitled to any share in the property of his putative father.

Held by the High Court, that the Hindu Law, as administered in this country, recognizes only the son of a female slave (Dasi) as an illegitimate son; that a concubine is not a slave; and that the son of a concubine is not, therefore, entitled to take a share in his putative father's property.

Held further by the Chief Justice that the son of a Marumakkathayam woman has only the status of his mother and is governed by Marumakkathayam Law which recognises no relationship between a father and son. *Nallakannoo* vs. *Bagavathi Pillai.*

4. T. L. R., 1.

4.—*Punarboo son by re-married wife—Succession of, in preference to daughters' and widow—attachment of deceased father's estate for daughter's debt—Invalidity of, as against Punarboo son.*

Held that under the Hindu Law, a son by a re-married woman, where the caste usages allow remarriage of women, belongs to the class of secondary sons known as Punarboos; that such son succeeds to the estate of his father, in the absence of *aurasa* sons, to the exclusion of widow and daughters; and that an attachment, therefore of the deceased father's estate for the debt of his daughters, is invalid as against his sole surviving Punarboo son. *Palavesam* vs. *Muthalagi.* 12. T. L. R., 171.

5.—*Right of succession.*

Held that under the Hindu Law a father and son, (following Makkathayam Law) are joint and equal owners of ancestral properties and that the fact that the latter predeceased the former, does not, in the least, affect the right of succession of the latter's male issue to his properties. *Moothachi* vs. *Maulamma.*

5. T. L. R., 37.

6.—*Undivided Hindu family—co-parcener's right of succession to and management of, estate left by the last surviving male member.*

A, a Hindu widow, sues, as the sole heiress of her deceased husband B, who was the last surviving male member of his family, for the recovery of property from C and D (among others) the sister and mother respectively of her deceased husband; and also to set aside, as fraudulent, a will alleged to have been made by B in favour of C and D.

The following queries were referred to the FULL BENCH:—

(i) On the death of the last surviving male member in a Hindu family, does his widow take the estate to the exclusion of the widows of other co-parceners who predeceased her husband, or do all the widows of undivided co-parceners succeed to the estate jointly?

(ii) If all the widows succeed jointly, who is entitled to manage the estate?

(iii) Whether a division of the estate may be decreed as between widows of co-parceners and if so, on what principle?

Held by the majority (i) That A is not entitled to succeed to the estate to the exclusion of the 2nd defendant (her mother-in-law) and that A and D are jointly entitled to hold and enjoy the estate during their life:

(ii) That D being senior in age and rank, is entitled to manage the estate for the benefit of all the members: and

(iii) That neither A nor D can claim partition of the estate between them; but a distribution of property may, at the discretion of Court, be allowed with a view to secure to each member the beneficial enjoyment of the estate, in cases where the members cannot live in harmony and the conduct of the manager renders such a step necessary. *Kupoo Ammall* vs. *Rukmani Ammall.*

5. T. L. R., 45.

7.—*Right of succession.*

A, a Hindu died issueless, leaving his widow B, who succeeded him and enjoyed his property till her death. The plaintiff is the daughter of the sister of A, and the 2nd defendant mother of the 1st defendant is the sister of B. The question is who is the preferential heir to the property left by the deceased A.

Held that, according to Mitakshara, the plaintiff is a Bhinna Gotra Sapinda and, as such, a Bandhu of the deceased A and is, therefore entitled to succeed to the property of her maternal uncle,

in preference to the 2nd defendant who is but the sister of the deceased's widow. *Ramaswamy Ariyan* vs. *Bagavathi Ammal.*

7. T. L. R., 35.

8.—*Krishnanvakakkar—succession—Grand-daughter's right to succeed to daughter's property inherited from her father. The term "Stridhanom" explained. Custom at variance with text of law, when to be followed.*

S, a member of the Hindu community known as Krishnanvakakkar, died in 1050, leaving 3 daughters A, B and C and 3 grandsons D, E and F—two by a predeceased daughter and the third by A. The property of S then passed into the hands of the grandsons D and E. Thereupon, A, B and C effected a partition of all the properties left by their father and filed a suit and obtained a decree in 1058 for recovery of the properties from D and E—their sister's sons. But, before the execution of the decree, C died leaving behind her a minor daughter G. G now seeks to recover ⅓ share of the estate given to her mother under the partition. Upon the defendant's denial of G's right to inherit under the Hindu Law, she set up a special custom among the Krishnanvakakkar giving her such right.

Held on the evidence in the case, that Krishnanvakakkar to which community the parties belong, follow the Hindu Law with one or two points of divergence from it, *viz.*, the widow cohabiting with the brother of her deceased husband and the existence of *Pathni Bhagom.*

Held further (i) that the property in suit did not become the Stridhanom of Plaintiff's mother, in which case it would descend to her children male or female, but was only property inherited by her, which, on her death, should devolve upon the next legal heir of her father, *i.e.*, to the surviving sister and, after her, to the daughter's sons of S.

(ii) That the property being the inheritance of the fathers from their father, it was not their absolute property.

(iii) That the plaintiff has, under the Hindu Law, no right to the property in suit and that it devolved upon the surviving daughters of S. on the death of A, and that the special custom set up by plaintiff has not been proved.

Held also that the course of law cannot be disturbed unless a valid custom at variance from it, is established and that, where usage is opposed to the clear text of the law—of course not prohibited by law—the former should be followed in preference to the latter, and it is immaterial to consider whether the custom pleaded

is in consonance with or opposed to the text of the law. *Bagavathi* vs. *Mathevan.* 8. T. L. R., 51.

9.—*Sister's right to inherit brother's property.*

A sister is a Bhinna Gotra Sapinda of her brother, and, as such, a Bandhu. Consequently she would be entitled in the absence of Sapindas and Samanodakas, to take the inheritence. *Shanmukam* vs. *Muthumperumal.* 8. T. L. R., 163.

10.—*Son of divided paternal uncle and married daughter of undivided brother—Preferential claimant under the Benares school of Hindu Law.*

Under the Mitakshara when one dies leaving property, the married daughter of his brother, being only a Bandhu has no preferential claim over a divided paternal uncle's son who is a *Samana Gotra Sapinda* of the deceased. The fact that the deceased and his brother were undivided, would not improve the claim of the brother's daughter, as the moment she married, she ceased to be a member of the deceased's family. *Subramanya Aiyan* vs. *Venkiteswara Aiyan.* 9. T. L. R., 16.

11.—*Female inheriting property from male—effect of on succession, Father's sister and grandsons of paternal grandfather's brother—Preferential heirs. Shanars.*

[The parties are Shanars treated governed by Mitakshara Law].

Under the Mitakshara, a female who inherits property from a male is simply a trustee for life, and her intervention does not affect the line of succession to such property.

The sister of the father of a Hindu male, is his Sapinda by birth; but, on her marriage, she loses her original gotra, and acquires a new gotra, and thus becomes a *Bhinna Gotra Sapinda* of his, and, therefore, a Bandhu.

The grandsons of a brother of the paternal grandfather of a Hindu male, are his *Sagotra Sapindas.*

A Sagotra Sapinda is in the first class of heirs, and excludes a Bandhu who falls under the third class. *Ariraman* vs. *Neelaperumal.* 10. T. L. R., 37.

V. Joint Family.

1.—*Undivided co-parcener—Suit by—Trespass—guardians—Adverse claimant—Self-acquisition—Civil Procedure Code, S. 437.*

Suit by an undivided co-parcener for recovery of property said to have been trespassed upon by the guardians of the minor

daughters of his deceased co-parcener, as the deceased's legal heir and representative on the ground that the property descends, as such, to him by right of survivorship, the deceased having left no male issue. The defendants raised the plea that the minors are the rightful owners of the property, it being their father's self-acquisition.

Held following the dictum of law laid down in IX. M. I. A. p. 539, that the property being found to be the self-acquisition of two co-parceners, on the death of one of them his moiety descends to his widow and daughters in preference to the other co-parceners who may be brothers or cousins; that the right of survivorship or joint tenancy recognized by English Law in such cases is unknown to Hindu Law by which the parties are governed.

Held also, on the authority of the decision in I. L. R., 3., Bom., p. 151, that the property in the present case being found to be the self-acquisition of the deceased co-parcener, the father of the minor defendants and that finding being unquestioned, his share goes to his daughters and not to his co-parcener, the 2nd plaintiff; and that in this view the possession of the property by defendants 1 to 3 as the guardians of defendants 4 to 6 is not that of trespassers but of rightful owners.

The 2nd plaintiff who claims adversely, as against the minors, the whole property to be his, cannot hold the position of their guardian, Section 437 of the Civil Procedure Regulation prohibiting his appointment as guardian of the minor defendants. *Samuel* vs. *Cherian*. 12. T. L. R., 220.

2.—*Undivided Hindu family—self-acquisition.*

The self-acquisitions of one of two undivided brothers in a joint Hindu family, do not become joint property by the mere fact of their remaining in a state of union and such acquisitions made without the assistance of patrimony, must be deemed to be the separate property of the acquirer. *Runganatham* vs. *Arunachalam*. 2. T. L. R., 14.

3.—*Undivided family—Right of absent member to share in the acquisitions of his other brothers—Presumption.*

A, the assignee of the Judgment-creditor of B, brings a suit to establish his right to have B's share in a certain immovable property sold in satisfaction of the Judgment-debt due by B, on the ground that the property is the joint property of B, C, D and E (all brothers) who constitute an undivided Hindu family. C contends (D and E being dead) that the property in question was acquired

during the prolonged absence of B for about 30 years, with funds belonging exclusively to C, D and E and that, hence B is not entitled to share in such acquisition.

Held that if two or three out of four brothers, live together and, without the aid of patrimony or common family funds in which the fourth brother living separately is entitled, made some acquisitions, such acquisitions should be treated as the property of the acquirers; that the chief criterion is to see where the purchase money came from, and the presumption of such property being the joint property of the whole family would vary according to circumstances; and that the reason of the presumption, namely, that acquisitions by the eldest member of an undivided family, are to be treated as acquisitions for the benefit of the whole family, including in some cases, absent members as well, is that the acquirer is ordinarily in possession and enjoyment of common funds of the whole family. *Manickam* vs. *Iyemperumal*.

6. T. L. R., 43.

4.—*Self-acquisition.*

Held that a man has absolute control over his self-acquisition whether he be governed by Makkathayam or Marumakkathayam Law of inheritance, and is a position well established by a current of recent decisions both in British India and Travancore. *Valli* vs. *Mathevan.* 7. T. L. R., 102.

5.—*Gains of learning—minor's right to property left by deceased father—Right of minor's grandfather to be guardian.*

[The parties are palanquin bearers by caste and follow the Makkathayam Law].

Held by a FULL BENCH that the property acquired by A, a Makkathayam Hindu as a public servant, is his self-acquisition, the education imparted to him at the expense of the family having been of an elementary character; that his son (B) inherited it to the exclusion of C, A's father; and that in an undivided Hindu family, the grandfather is the guardian of his minor grandson, in preference to the Mother of the Minor. *Muthu* vs. *Iyikutti.*

8. T. L. R., 135.

6.—*Joint estate—undivided co-parcener—Adverse possession.*

Held that mere possession of one brother or co-parcener of a portion of the joint estate for any length of time, cannot extinguish the right or title of the other co-parceners and is hardly adverse to the latter. *Kunju* vs. *Neelacandan.* 7. T. L. R., 184.

HINDU LAW.—(*Continued.*)

7.—*Undivided member—Right to sue—possession—Burden of proof—Wrong doer.*

Suit for cancelment of attachment and sale and for declaration of title to, and possession of land.

Held that an undivided member in possession of common and joint property of the family, may maintain a suit in his own name or on behalf of the whole family in respect of such property.

Held also that actual or constructive possession without proof of any title to the property is generally sufficient to support an action against a wrong doer and that the burden of proof in such a case is on the defendant. *Subramania Aiyan* vs. *Cheria.* 4. T. L. R., 39.

VI. Maintenance.

1.—*Sonless widow.* According to Hindu Law, the maintenance of a sonless widow is a charge upon the family and no disposition of family property could be made to the prejudice of her claim, and maintenance also includes a claim for dwelling in any part of the family estate. *Kunjumayitti* vs. *Mallan.* 1. T. L. R., 105.

2.—*Widow's right to maintenance.*

Held that under Hindu Law, a widow cannot be said to have a lien or charge on any specific portion of the husband's property and that debts contracted by the husband, in his life-time, take precedence over maintenance as a charge upon the deceased's estate.

Held further that the dictum that a wife is, under Hindu Law, a co-owner with her husband and that he cannot alienate or dispose of his property by will in such a manner as to be prejudicial to the wife's rights to maintenance, must be accepted with modification according to the circumstances of the case. *Ponnachi* vs. *Alakan Perumal.* 6. T. L. R., 128.

3.—*Wife's right to maintenance from husband—guardianship of daughters above seven years of age. Sale for family debt, a prior charge above maintenance—Pleader's fee—Assessment of the fee when parties retain separate pleaders.*

Held that a wife is not entitled to separate maintenance from her husband unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence, or other justifying cause, she is compelled to live apart from him; that as for the marriage expenses of the daughters, the mother is not their proper guardian after they have attained the age of seven

years and cannot under any circumstances, claim payment of such expenses in advance, that in default of the father it is for the brothers to see that their sisters are given in marriage at the proper time in a proper manner; and that though the maintenance of wife and children may, in certain circumstances, be a charge on the husband's property as against a purchaser, it is not so in a case in which the sale took place in payment of a family debt which it was the primary duty of the head of the family to pay.

Held also that where parties on the same side retain each a separate pleader the other party, if he loses, may be charged with the full fee of each of the pleaders if the interests of the parties are distinct, but assessment of the fee should be on the value of the claim put forth by each party when such value is less than the whole value of the suit and not necessarily on the aggregate value of it. *Oolakamma* vs. *Ganapathi Asari.* 6. T. L. R., 37.

4.—*Widow living in her parent's house—claim to maintenance. What amount a widow may claim from family property.*

A widow's refusal to live with her husband's relations is not of itself a valid ground for denying her claim for maintenance out of the property her husband died possessed of. All that the Hindu Law requires, is that she should not leave her husband's house for immoral purposes. She is entitled to maintenance unless she is guilty of unchastity or other disreputable practices after she leaves that residence.

A widow is not entitled by way of maintenance out of the family property, to claim more than what her husband's share would have been in the annual proceeds of such property. *Sundarakrishna Iyen* vs. *Avadi Ammal.* 9. T. L. R., 29.

5.—*Kshatryas—wife's right to live separately and claim maintenance. Husband's marrying a second wife.*

A wife is not entitled to separate maintenance from her husband in the absence of a just and proper cause for her living apart from him, and the husband's marrying a second wife is not, *per se*, a just and proper cause for separate residence. *Chotti Bhayi* vs. *Gopala Sing.* 9. T. L. R., 59.

6.—*Right to maintenance of—Stridhanom.*

A Hindu widow, even in the absence of ill-treatment from her husband's relatives, or other justifying cause, is entitled to claim a *separate* maintenance. She may claim arrears as well.

HINDU LAW.—(*Continued.*)

The value of Stridhanom cannot ordinarily be taken into consideration in determining the rate of maintenance due to her from her husband's property. *Parwathi* vs. *Chithraputhran.*

4. T. L. R., 17.

7.—*Award of, in a lump sum—matters to be considered in awarding maintenance.*

The award of a lump sum in satisfaction of a claim for maintenance, is not authorized by law.

In fixing the amount of maintenance to be granted to a widow, two questions have to be considered—(i) What would be the fair wants of a person in the position and rank of life of the widow? (ii) What portion of the family income could, consistently with justice to the other members of the family, be given her to meet those wants?

To fix what could be awarded as maintenance, it is not the market-value of the properties of the family, but the nett annual yield thereof, that should be ascertained. *Murukan* vs. *Kochammal.*

9. T. L. R., 205.

VII. Marriage and Sonship.

1.—*Presumption of legitimacy.*

Amongst those following the Makkathayam law, the presumption is in favour of legitimacy. *Irayimman* vs. *Simayon.*

1. T. L. R., 91.

2.—*Asura form of marriage.*

Held (following the decision in Regular appeal 37 of 1059) that, to constitute an Asura marriage, it is necessary that the parents should receive money or goods for their own use, in consideration of giving their daughter in marriage, *i. e.,* there should virtually be a sale of the bride by her parents; in other words, that the receipt of money or goods by the parents of the bride for *their own use*, is the distinguishing feature of the Asura form of marriage; and that when money or goods are given to a damsel *whose kinsmen* receive them not for their own use, it is no sale: it is merely a token of courtesy and affection to the bride. *Thirumalakolunthu Pillai* vs. *Ananchappa Pillai.*

7. T. L. R., 39.

3.—*Asura form of marriage—Stridhanom.*

Held that to constitute the Asura form of marriage, it is necessary that the parents should receive some pecuniary consideration for their own use, in consideration of their giving their

-...ful rights 15 p. 189

daughters in marriage—*i. e.*, there should have been virtually a sale of the bride; and that receiving money for the expenses of marriage, cannot convert the gift of the girl into a sale. *Sivasubramanian* vs. *Thankavadivoo.* 7. T. L. R., 80.

4.—*Form of marriage—Presumption.*

Held that the law cannot presume irregularity or the celebration of a marriage in a form the law disapproves. *Bagavathi* vs. *Kolappen.* 7. T. L. R., 38.

5.—*Presumption as to form of marriage followed by Sudras—Prajapathya and Asura forms of marriage—Husband's right to deceased wife's property.*

According to the recent decisions of this court, the presumption to be made as regards the precise character of a marriage is that it is of a blameless or approved form. According to Manu the Asura form of marriage is not permitted even among the Sudras. They may marry in the Prajapatya form which is one of the four approved forms.

In the absence of evidence to rebut the legal presumption as to the approved character of a marriage, the husband will be entitled to inherit the property of his wife in case she predeceases him. *Chithambaravadivoo* vs. *Kannu.* 8. T. L. R., 167.

VIII. PARTITION.

——*Decree for partition—Ex-parte judgment—Limitation.*

Held that under the Hindu Law administered in this country and in British India, a decree for partition is tantamount to a division and the interests of the decree-holder become thereby separated from those of the rest of the family.

That an *ex-parte* judgment is good for purposes of *res-judicata* provided the parties are the same.

That it is not necessary that each member of a Hindu family should have enjoyment of each and every bit of the common property to save his right to a share therein from limitation bar. *Velu Ammal* vs. *Subramania Aiyan.* 6. T. L. R., 19.

IX. WILL.

1.—*Competency of Makkathayom Hindu to execute a will.*

Held by a majority of the FULL BENCH that, under the Hindu Law, as administered in this State, no Makkathayam Hindu is competent to make a valid will. *Ramalingom Pillai* vs. *Balasubramania Pillai.* 6. T. L. R., 146.

HINDU LAW.—(*Continued.*)

2.—*Executed by a Hindu Native of Ceylon—validity of—effect of migration on law of inheritance*—VI. T. L. R., 146.

Held that questions of succession, inheritance and testamentary dispositions of property, are decided by the courts in Travancore with special reference to the personal law of the last owner of the property.

That where a Hindu family migrates from one country to another, it carries its own law with it.

That the question of the validity of a will executed by a Native Hindu of Ceylon settled in Travancore, must be decided according to the customary law of Ceylon applicable to that class of people :

That the decision in S.A. 94 of 1064 (VI. T.L.R., 146) as to the invalidity of a will executed by a Hindu Native of Travancore following the Mitakshara Law, is inapplicable to such wills ; and that they are valid if they are not at variance with the law as established by Thesawaleme. *Chellappa Pillai* vs. *Itti*. 11. T. L. R., 109.

X. WOMAN'S ESTATE.

1.—*Presumption as to marriage. Property acquired (including Stridhanom) and inherited by female—Descent of.*

In the absence of evidence to the contrary, the presumption to be made as regards a marriage between persons following the Hindu Law is that it is of a blameless character, that is, in a form approved by the Hindu Law.

Under the Hindu Law, the husband is the lawful heir of his wife married in an approved form, as regards properties acquired by her, including her Stridhanom.

Property therefore devolving on a Hindu woman by inheritance, would, on her death, revert to the next legal heir of the person from whom she inherited the property, in preference to the husband. *Isakki* vs. *Poonankani*. 10. T. L. R., 74.

2.—*Stridhanom—Descent of—in the absence of daughter.*

Held that, according to Hindu Law (Mitakshara) the Stridhanom of the wife comes to the son, in the absence of daughter or daughter's daughter, or son's daughter ; and on his death, the father succeeds to it in preference to his maternal grandfather who is not in the line of heirs. *Penamala* vs. *Arikrishnaperumal*.
7. T. L. R., 158.

3.—*Stridhanom—Descent of.*

Held that according to the ordinary principles of Hindu Law, the Stridhanom property of a woman goes to her husband in default

HINDU LAW.—(*Concluded.*)

of issue, where the marriage was in one of the approved forms. *Siva Subramanian* vs. *Thankavadivoo.* 7. T. L. R., 80.

4.—*Widow's right to make an absolute sale of property to the prejudice of reversionary heir.*

Held that a widow, under the Hindu Law, though she takes the whole property of her husband dying without issue, takes but a special and qualified estate, and if there be reversionary heirs of the husband, the widow cannot, alien the property except for special purposes supposed to conduce to the spiritual welfare of her husband and except in cases of absolute necessity.

Held also that it is unjust to charge the *corpus* of the husband's estate, in which the reversionary heirs are interested, with debts occasioned by the litigation conducted by the widow for her own aggrandizement and for the purpose of defeating the claims of the very individuals interested in preserving the *corpus* of the estate intact. *Muthukrishnan* vs. *Meenakshi.* 7. T. L. R., 24.

5.—*Sulka—Definition of, and descent of.*

The word "Sulka," as used in the Mitakshara, includes what parents bargain, and receive in trust, for their daughter before her marriage, and subsequently pass on to her. According to the Mitakshara, that portion of Stridhanom which comes under the head of *Sulka*, passes to uterine brothers, irrespective of the form of their sister's marriage. *Ponnu Ammal* vs. *Subramania Aiyer.* 8. T. L. R., 112.

HOLIDAYS.—*Issue of remand orders : Recording of confessions.*

Magistrates must attend even on holidays to the applications of the Police to issue remand orders and to record confessions. It is not however necessary that they should attend office on holidays to perform these duties. *Criminal Circular* 6 *of* 1061. 4. T. L. R., App. 11.

HYPOTHECATION.

1.—*Impugnment of hypothecation—Burden of proof. Title and possession. Right to allege absence of consideration.*

Suit to recover money due under a hypothecation deed. The 3rd defendant intervened and claimed the hypotheca, independent of the mortgagors (defendants 1 and 2). The Munsiff gave a decree for plaintiff ; but, in appeal, that decree was reversed on the ground that the hypothecation had no consideration. The plaintiff appealed.

Held that as the intervenor claims the property mortgaged, independent of the mortgagors, he must establish his title and

possession, to get the property exonerated from liability under the mortgage; that he is not competent to question the *bona fides* of the mortgage, and that the question of consideration is immaterial for the decision of the case. *Mahomed Kunju* vs. *Akammathu*.

10. T. L. R., 81.

2.—*Conversion of into mortgage—Recovery of money or possession of property—cause of action—Limitation.*

Suit to recover money due under a hypothecation deed which conferred on the creditor the right to enter upon, and take possession of, the hypotheca on the debtors' defaulting to pay interest at the stipulated periods; or to recover possession of property on the ground that defendant has defaulted to pay interest subsequent to 1063.

Held that the transaction, though originally a hypothecation, became converted into a mortgage with possession on defendant's defaulting to pay interest.

That such conversion is not illegal. That the plaintiff's claim for money is barred, as no term for repayment is fixed in the bond, and 12 years have elapsed from the date thereof:

And that the claim for possession of the property is not barred, as the cause of action therefor accrued only in 1064, when default was committed in the payment of interest. *Mariady* vs. *Renga Row*.

10. T. L. R., 147.

3.—*Interest.*

Interest due under a hypothecation bond is a charge on the property hypothecated the hypothecation being a security both for principal and interest. *Nina* vs. *Easwaran*. 10. T. L. R., 83.

4.—*Hypothecation bond—Purchaser at court sale—sale as movable property—unregistered sale certificate—Purchaser's remedies as against the debtor and the hypotheca.*

Suit by a purchaser of a hypothecation bond at a court-auction, to recover from the obligor and from the hypothecated property the amount due under the bond. The court-sale not having been conducted under the procedure applicable to real property and the sale-certificate granted to plaintiff not having been registered, it is contended that the sale is *ab-initio* invalid:

Held that a hypothecation deed consists of two obligations,

(i) To pay the debt as a simple debt and

(ii) the creation of a charge on the real property in the way of collateral security,

HYPOTHECATION.—(*Concluded.*)

That the failure to adopt the procedure prescribed for sale of immovable property and the non-registration of the sale-certificate deprive the purchaser of the right to recover the debt as a specific charge on the property hypothecated ; but that the sale of the bond as movable property, does not invalidate the transfer to the purchaser of the right to enforce the first obligation, *i.e.*, the right to recover the debt from the obligor (defendant) and his property as a simple debt. *Krishnan* vs. *Aiyappen.*

11. T. L. R., 177.

5.—*Enforcement of chose in action by Pledgee or Hypothecatee. Effect of court-sale on.*

Held that the pledgee or hypothecatee of a chose in action cannot call upon the pledgor's debtor to directly pay the debt to him unless he has obtained an assignment of the pledgor's rights by a judicial or private sale.

Held also that a court sale of property held while there was a valid hypothecation subsisting thereon would be subject to the lien created by such hypothecation. *Sankaranarayana Aiyan* vs. *Kathija Ummal.* 11. T. L. R., 67.

HYPOTHECATION AND MORTGAGE—*Registered deeds—Priority of lien.*

Held as between two registered conveyances the lien created by the prior one must prevail. *Padmanabhen* vs. *Devan of Travancore.* 11. T. L. R., 70.

IMPRESSMENT.

——*Resistance to—no offence.*

See "Penal Code, Section 353." 7. T. L. R., App. 74.

IMPRISONMENT.

——See cases under "Sentence."

IMPROVEMENT.

——See cases under Civil Procedure Code.

SECTION 207 9. T. L. R., 147.
9. T. L. R., 185.

1.—*Jenmi and Kudyan.*

As a general rule, a jenmi is entitled only to a fourth of the value of improvements made by the tenant whilst the remaining three-fourths go to the tenant. *Madhavan* vs. *Iswaran Nampuripad.* 1. T. L. R., 108.

IMPROVEMENT.—(*Continued.*)

2.—*Award of—usufructuary mortgage.*

A tenant holding property under a usufructuary mortgage is, even without any express agreement, entitled before ouster to be compensated for any permanent improvement that he may have made upon the land. *Mahomed* vs. *Aliyarkunhu.* 3, T. L. R., 23.

3.—*Compensation for—Rate of—cancelment of sale—negligent party.*

A sues to set aside a sale made by his late Karanaven to B, 11 years after the date of the sale and 6 years after he (A) became Karanaven. The Zillah Judge in appeal cancels the sale and awards to B his share of compensation for improvements effected by him.

Held that B was in possession in his own right and not as tenant; and that as A, by his negligence, made B to believe that the property was his, A could not in equity be allowed to recover the property without fully compensating B for the improvements made at his cost. *Arathen* vs. *Kumaran.* 8. T. L. R., 157.

4.—*Rate of, for building.*

In the case of buildings, the tenant is entitled, in the shape of compensation for improvement, to the full value that may be assessed at the time of eviction. *Koshi* vs. *Devaki.* 9. T. L. R., 148.

5.—*Tenants' right to erect costly building—compensation for buildings.—Valuation of trees—Rates at Nagercoil—assessment of Pattom. Sirkar tax.*

Costly buildings erected by a tenant without a previous reference to his landlord on a garden let out for purposes of plantation, cannot be treated as improvements for which compensation is claimable, when such costly buildings are unlikely to add to the letting value of the garden. The customary mode of assessing compensation for trees planted by a tenant in the District of Nagercoil, discussed.

The rates for the valuation of bearing trees on occasions of sales of landed property, held to be inapplicable in assessing compensation to the tenant for the labour and capital employed by him in planting trees on his landlord's garden.

The value of bearing trees for purposes of awarding compensation to a tenant, is represented by a sum which, if invested at the ordinary market rate of 12 per cent. interest per annum, would annually yield an amount equal to the annual value or *pattom* of such trees. In assessing the *pattom* of trees for purposes of ascertaining the amount of compensation due thereon, the Sirkar

tax payable on them should not be left out of account. *Isakki* vs. *Kulasakaran.* 10. T. L. R., 7.

INDIAN TRUST ACT.

——*Sections* 51 *and* 56 *of.*

See cases under "Devaswom." 12. T. L. R., 33.

INJUNCTION.

—— *Prohibition against entry into temple—loss of caste.*

The court allowed the issue of an injunction prohibiting defendant (a konkani priest) from entering the temple, until he shall have performed the prescribed penance. *Janardana Vadyar* vs. *Naga Shenoi.* 11. T. L. R., 86.

INJURY.

——*Damages—right of action.*

See "Damages." 6. T. L. R., 134.

INSANITY.

——*Lucid interval.*

See "Burden of proof. Insanity." 8. T. L. R., 164.

INSTITUTION FEE.

1.—*Damages.*

Where a suit is brought for damages in respect of property and the defendant questions the title of the plaintiff to the property itself, the court ought not, upon that mere allegation, order the plaintiff to pay institution fee for the property as well. *Virupakshi Aiyan* vs. *Kovilappen.* 1. T. L. R., 53.

2.—*Denial of plaintiff's right—Bona fides of defendants.*

A plaintiff could not be compelled to pay institution fee on the value of the land, unless the court believes the denial by defendant of the plaintiff's right is *bona fide,* and the question of *bona fides* is one of fact. *Marthandan* vs. *Akasaperumal.*
1. T. L. R., 78.

3.—*Suit filed in a wrong court pursuant to order of another court—Effect of. Party's liability to pay fresh institution fee for filing the suit in the court having jurisdiction.*

Plaintiff brought a suit in the Zillah court. The Zillah Judge ordered the plaint to be returned to be presented to the Munsiff's court, where the suit was filed and decided. In appeal, the Judge

INSTITUTION FEE.—(*Concluded.*)

who heard it, finding the case to be beyond the Munsiff's pecuniary jurisdiction, dismissed it with costs throughout.

Held that the case is a proper one for return of plaint under Section 29 of the old C. P. C.; and that, since the procedure in the wrong court was due solely to the mistake of the superior court and not to any default of the party, it is nothing but equitable that he should be given credit for the institution fee paid by him into the wrong court. *Katamber Nampuripad* vs. *Chakko.* 8. T. L. R., 161.

INTEREST.

——See " Limitation, Section 20". 1. T. L. R., 67.

1.—*Award of subsequent interest on Judgment-debt. Rate of.*

A court that has to execute a decree ought to award interest on the Judgment debt, though not provided in the original decree. The interest awarded from date of decree to date of payment, should not exceed a moiety of the principal. As a general rule interest at 6 per cent. may be awarded but should never exceed 12 per cent. 2. T. L. R., App. 1.

2.—*Decree for payment of money—cases where decree is silent.*

Every decree for payment of money carries interest with it, unless distinctly disallowed by the terms of such decree. In all cases where decree is silent as to the rate of interest, interest at the rate of 6 per cent. (subject to the provisions of Regulations I and IV of 1010) should be allowed. The court executing the decree should not enter into the merits of the claim for interest.

No interest on costs and compound interest shall be allowed. 3. T. L. R., App. 21.

3.—*Not to exceed original principal.*

Held that the utmost that a creditor can get on account of interest up to date of realization of the debt in execution of the decree is a sum not exceeding the original principal sum, being made up of a moiety of the original principal on account of interest from date of decree as also of a similar amount on account of interest accruing due prior to date of decree. *Oomen* vs. *Padmanaban.* 7. T. L. R., App. 47.

4.—*Amount of, awardable in execution.*

The amount of interest levied in execution, from date of decree to date of realization, should not exceed a moiety of the principal debt. *Yooan* vs. *Ananthan.* 10. T. L. R., 59.

INTEREST.—(*Concluded.*)

5.—*Further interest—award of, when decree is silent on the matter.*

Section 204 C. P. C. prohibits further interest being awarded in execution when the decree is silent on the matter. *Keshavan* vs. *Sridharan Nampuripad.* 10. T. L. R., 48.

6.—*On arrears of rent.*

Held that interest is awardable on arrears of rent. *Mathan* vs. *Govindan.* 11. T. L. R., 215.

7.—*Decree-debt—Rate of interest on. Section 7 of Regulation I of* 1010.

Held that section 7 of Regulation I of 1010, extended to Zillah courts by Section 13 of Regulation IV. of 1010 prohibiting the allowance of interest by Munsiffs at a higher rate than 12 p. c., is still in force; that there cannot be one law for the Munsiff's courts and another law for the Zillah courts in matters like this, and the omission of section 13 of Regulation 4 from the list of sections saved, cannot be intentional, seeing that Section 21 is still retained in the statute; that Section 204 of the Civil Procedure Code must be read with the old usury laws expressly saved by the schedule attached to the Code, and it cannot be held to be an authority for awarding interest at a higher rate than 12 p. c.

Held further that the reduction of interest from date of decree to 6 p.c. is warranted by the circumstances of the case, plaintiffs having exactedinterest at more than the legal rate, and also compound interest; and that the award of future interest is left to the discretion of the Court. *Krishnaswamy Aiyan* vs. *Mahammathu.*
12. T. L. R., 186.

INTERPRETATION.

Held that Acts and Statutes of a Penal nature or those imposing a restriction, are always interpreted strictly. Where a man is compelled to relinquish certain rights in or claims over, property for some special purpose, and a method of procedure is prescribed to enforce the law, it is always necessary to show that such procedure has been accurately followed. *Sirkar* vs. *Runganathan.*
1. T. L. R., 8.

INTERVENOR.

See Civil Procedure Code, Section 28. 9. T. L. R., 60.

JENMI AND KUDIYAN.

1. JENMI AND JENMOM PROPERTY.
2. RIGHTS OF JENMI AND KUDIYAN.

JENMI AND KUDIYAN.—(*Continued.*)

3. FORFEITURE OF TENANCY.
   (*a*) WASTE.
   (*b*) NON-PAYMENT OF RENT OR OTHER DUES.

4. ALIENATIONS BY JENMI.

1. JENMI AND JENMOM PROPERTY.

1. *Jenmi.*—A Kartta is not a Jenmi within the Royal Proclamation ; the term Jenmi is properly confined only to Namburi Brahmins. *Varkki* vs. *Govindan Kartavu.* 1. T. L. R., 2.

2. *Title Derived from Devaswom.* One whose title is derived from a Devaswom is not a Jenmi under the Royal Proclamation. *Vasudevan Ilayathu* vs. *Keshavan.* 2. T. L. R., 57.

3.—*Royal Proclamation of* 1042. *Who are Jenmis.*

Held (following the decisions in A. S. No. 354 of 1046, A.S. No. 164 of 1044 and A. S. No. 129 of 1054) that the Jenmis technically so called are those that hold lands directly from Parasurama traditionally, *viz.*, Namburi Brahmins as also the representatives of Devaswoms ; that an Elayathu, has been held to be not a Jenmi (A. S. 132 of 1052) and that, therefore, the 2nd defendant in this case (who is unquestionably a Sudra who succeeded to the rights and properties of some old chieftain by virtue of a Royal Grant) is not a Jenmi under the Royal Proclamation. *Krishnan* vs. *Sankaran.* 7. T. L. R., 93.

4.—*Jenmi and Tenant—Ilayathu—Whether a Jenmi—Kanam lease by an Ilayathu (non-Jenmi)—Provision for renewal—effect of—Lessee's right to one renewal at least.*

The question having arisen whether the use of the expression ("கானம் முறைக்கு எழுதிப்பிடிக்க") (the Kanam may be periodically renewed) in a Kanam lease by an Ilayathu rendered the lease irrevocable, or at least liable to one renewal :—

Held that an Ilayathu is not a Jenmi governed by the Royal Proclamation of 1042 : And that the use of the expression "that the Kanam may be periodically renewed," in a lease by a non-Jenmi is, in the absence of consideration for the promise, insufficient to create a perpetual tenure, or to entitle the lessee to at least one renewal. *Cherian* vs. *Ulahannan.* 11. T. L. R., 195.

5.—*Jenmi and tenant—Purchase of Jenmom right by non-Jenmi at court-sale—Effect of—Delivery of possession, whether necessary to confer title on purchaser—Default to pay Michavaram for 12 years—whether computable from last payment or date of court-sale—Forfeiture of tenancy—Proof of demand—Notice of default.*

JENMI AND KUDIYAN.—(*Continued.*)

A tenancy created under the Royal Proclamation of 1042 relating to Jenmis continues, to exist with all its conditions, though the original Jenmi's interest has passed to another who is not entitled to be called a Jenmi under the Proclamation.

Purchase at court-sale of a Jenmi's right over property outstanding on Kanam lease, transfers the Jenmi's title to the purchaser, without actual delivery of possession by the court.

Where in respect of Kanam property so purchased, a suit is brought by the purchaser to evict the tenant on the ground of 12 years' default to pay rent, the period of default has not to be computed from the date of the court-sale; it is sufficient, if the plaintiff proves such default to himself and his predecessor in title. The plaintiff, however, can evict the tenant only by proving further that a formal demand was made for payment of the arrears. *Pappi* vs. *Narayanan.* 12. T. L. R., 101.

6.—*Jenmom property Kanam deed—characteristics of—Kalom Muvandu —Interpretation of the clause.*

Held that every document executed by a Jenmi for his Jenmom property, is not a Kanam deed falling under the Royal Proclamation of 1042.

That there is nothing to prevent a Jenmi executing a simple mortgage for his Jenmom property.

That the provision to pay certain customary dues, such as Adukkuvathu, contributions for Aradyantharams, and the like, to the Jenmi, is the characteristic of an irredeemable Kanam deed.

That the use of the expression "Kalom Muvandu" is generally a distinguishing mark of Kanam deeds.

And that the occurrence of the clause "இநிலங்ஙள்க்கு துல்ப்புண்டெங்கில் துல்ப்புதீர்ப்பிச்சு வாங்ஙிக்கொள்ளுந்நு. அல்லெங்கில் அர்த்தம் தரும் பொன் பற்றிக்கொள்ளுந்நு" in a document does not make the mortgage irrevocable, but imports that the tenant is to be repaid his money should the land become uncultivable owing to causes beyond his control, and should the landlord refuse to improve the land and render it cultivable at his cost. *Mamaroo* vs. *Neelan.*

6. T. L. R., 10.

7.—*Jenmom property—sale of in execution of decree—purchase by Ilayathu —Redemption of Kanam held under the previous Jenmi. Effect of non-payment of Michavaram for 12 years.*

Plaintiff an *Ilayathu* by caste sues for redemption of property, purchased at a sale held in execution of decree against one Elanagattu Namburi, a Jenmi under the Royal Proclamation of 1042,

The property was at the time in possession of defendants, under a Kanapattam lease given to their ancestors.

The questions referred to the FULL BENCH were (1) Whether the property in suit ceased to be Jenmom property governed by the Royal Proclamation on the purchase thereof by the plaintiff?

(2) If so, whether plaintiff is bound to respect the contracts entered into with the tenants by the former Jenmi, who was admittedly one coming under the Royal Proclamation or is at liberty to deal with his tenants as other ordinary landlords and mortgagors.

Held that a Court-sale cannot change the nature of the tenure of the property or the particular enactment by which it was governed before such sale and that the purchaser—whatever may be his caste or creed—succeeds to all the right, title and interest of the judgment-debtor and he is bound to respect all legal contracts *bona-fide* entered into by the debtor, with his tenants.

Held also that non-payment of Michavaram for 12 years would work a forfeiture of the Kanam tenure, only if it be in spite of express demand made by the Jenmi (para 3 of the Royal Proclamation). *Varidu* vs. *Krishnen.* 8. T. L. R., 6.

2. RIGHTS OF JENMI AND KUDIYAN.

1.—*Ettartham—Olapanam—Jenmi.*

Held that the claim for Ettartham is a matter which ought to be determined on evidence in each particular case, but as regards Olapanam a Jenmi is of right entitled to claim it from the tenants. *Chembakapillai* vs. *Narayanan Potti.* 1. T. L. R., 95.

2.—*Kanam—Right to renew Kanam—rent—limitation.*

The right to renew a Kanam is a statutory right under the Royal Proclamation and can be exercised both by law and custom at the end of every twelfth year from the date of the lease or of the last renewal.

A Kanam is not strictly speaking a mortgage in this country, but a perpetual lease which can only be determined by any overt act of the tenant, such as denying the title of the Jenmi, &c., and the limitation applicable is that provided for suits on leases.

The rent falls due year by year, the failure to pay affords a recurring cause of action and therefore, where the right to take rent is admitted, no limitation can arise in the case of a lease-hold. *Raman Nampuripad* vs. *Madavan Namburi.* 2. T. L. R., 49.

3.—*Re-adjustment of rent*—The right of re-adjustment of rent by Jenmies recognised. *Govindan Namburipad* vs. *Udyan.* 2. T. L. R., 1.

JENMI AND KUDIYAN.—(*Continued*).

4.—*Re-adjustment of rent.*

Under the customary law of the country, a Jenmi is entitled to a re-adjustment and enhancement of rent of any kind of land, whether garden or wet land, provided it is capable of bearing the increased burden.

The usual mode of fixing Michavaram is by ascertaining the gross yield of the land and deducting therefrom a moiety for seed and labour and also interest on the Kanam amount at the rates obtaining in the locality of the disputed land; and by the balance being taken as the Michavaram due to the Jenmi. *Govindar Namburipad* vs. *Govindan.* 2. T. L. R., 23.

5.—*Suit for—Small cause.*

Michavaram is only a rent and a suit for arrears of rent is a Small cause suit, provided the money-value is within the small cause value. 2. T. L. R., 13.

6.—*Right of tenant.*

A tenant is not entitled to the value of wild trees of spontaneous growth standing in the Jenmi's land. *Eli* vs. *Narayanan Namboori.* 3. T. L. R., App. 35.

7.—*Jenmi and tenant—Michavaram—*

Arrears of, a charge on Kanam land—Right of purchaser of Kanam land in court-sale.

Held by the FULL BENCH that arrears of Michavaram constitute a charge on the Kanam land on which it is due and that the purchaser of a Kanam right at a court-sale takes the property subject to the liabilities for Michavaram in arrears (with interest). *Nambiathen Battathiri* vs. *Varid.* 4. T. L. R., 76.

8.—*Relinquishment of tenancy—Kanam amount—claim for refund of. Suit by a Kanam tenant to surrender his Kanam holding and to recover from the Jenmi the amount of the Kanam advance.*

Held by a majority of the Judges at a FULL BENCH (chief Justice, and Sitarama Ayer, J., dissenting) that a Kanam tenant is not precluded from seeking the recovery of the Kanam amount and surrendering the property. *Vicar Apostolic of Malabar* vs. *Revi Namburipad.* 4. T. L. R., 44.

9.—*Impugnment of title—Renewal of Otti lease—claim to enhance Michavaram—Renewal fees.*

A is a Jenmi governed by the Royal Proclamation. B and C hold lands of A on an Otti granted by D, A's father. B and C are

sued by A to compel them to accept from him a renewal of the said Otti lease by advancing to A a further sum of money as Ettartham. A also seeks to enhance the Michavaram and to recover the customary Adukkuvathu fees, &c.

B admits A's title, but disclaims any present interest in the property, he having conveyed his rights to C and E. These latter deny A's title alleging that the property had been held of the Suchindram pagoda by the family of B and that the Otti document in question was obtained from B by force and fraud and is void for want of the assent of B's Seshakars.

Held that C and E who could stand in no better position than their assignors, B and his family, are not at liberty to impugn the title of A's ancestor to grant the Otti.

That C and E cannot be allowed to impeach on flimsy grounds the validity of transactions entered into by them deliberately and with their eyes open, and it would militate against well known, rules of law if C and E be permitted either to aver and prove that A's family (under whom the family of B, the predecessors in title of C and E claim) were not the rightful parties to grant the lease or deny the title of their landlord, the claims of A (as Jenmi) being all along acknowledged by them.

That a Jenmi is entitled to enhance the Michavaram, if the lands are capable of bearing the additional burden sought to be imposed thereupon ; but that he cannot be allowed to do so in addition to levying Ettartharm. He may either elect to claim enhancement of Michavaram or enhancement of the amount of the Otti.

That Olapanam being a fee or perquisite due to the Jenmis at each renewal, the fact that the tenants are, under recent laws, put to the additional expense of Stamp and Registration fees, is no valid ground for refusing the Jenmi's claim for such perquisite, the same being treated as a sort of compensation for the deprivation by legislature of his right of ouster. *Veloo Pillai* vs. *Keshavan*. 6. T. L. R., 131.

10.—*Michavaram—Arrears of—to be deducted from Kanam amount.*

Held that a plaintiff is entitled to deduct the amount of Michavaram due to him from the Kanam amount. *Sridharan Moothathu* vs. *Raman*. 7. T. L. R., 18.

11.—*Reclamation of waste land. Improvements. Ettartham and enhancement of rent—Jenmi's right to claim only either.*

JENMI AND KUDIYAN.—(*Continued*).

Held that if a tenant has converted what was once waste into paddy land, it should be viewed as an improvement, and the expenses incurred by the tenant in making the improvement, should be estimated in view to a deduction being made from the gross rent, on account of the money laid out in the improvement.

Held also that a Jenmi cannot, at the time of renewals claim both additional Kanom and enhancement of rent, but should be satisfied with one or the other mode of participating in the increased productiveness of his land. *Kutti Asen Kunju* vs. *Keshavar*.

9. T. L. R., 50.

12.—*Jenmi's dues*—Limitation. Vide "Limitation Regulation Art. 109." 9. T. L. R., 204.

13.—*Eviction of Kanam tenant.*

A Jenmi cannot sue to oust his Kanam tenant, but can only claim a renewal of the Kanam lease, unless the tenant has forfeited tenure by allowing Michavaram and other dues to fall in arrears for 12 years continuously after demand for payment. *Kunjan* vs. *Keshavan*. 9. T. L. R., 129.

14.—*Enhancement of rent with reference to shops—Brahmin Tenants' liability to pay Vachukalcha.*

Held by a FULL BENCH that a Royal Proclamation Jenmi is not entitled to claim enhancement of *pattam* with reference to the rents realised by a tenant from shops erected by him on his *Kanam* holding. And that the fact of the tenant being a Brahmin would not exempt him from paying to the Jenmi the fee called *Vachukalcha* *Neelacandar* vs. *Subbaiya Aiyan*. 10. T. L. R., 91.

15.—*Suit by tenant to compel Jenmi to accept Michavaram—Maintainability of.*

Held that a regular suit by a tenant to compel a Royal Proclamation Jenmi to accept payment of Michavaram, is maintainable. *Kathija Ummal* vs. *Nambiathen Bathathiri*. 12. T. L. R., 69.

16.—*Reduction of Michavaram on account of increased Sirkar tax—Tenant's right to, when recognizable and on what grounds—Ettartham—claim for in a suit—readjustment of terms of Kanam lease.*

Held by a FULL BENCH that Sirkar tax on Kanom leaseholds is payable by the tenant out of his share of profits.

That a Kanapattam tenant cannot claim a reduction in the amount of Michavaram payable to the Jenmi, on account of increase in the assessment, but that the fact that an increase in the Government Assessment has occurred, may be taken into considera-

tion at the time of periodical re-adjustment of the terms of the contract of Kanapattam lease.

That as the Jenmi has sued for Ettartham which is the capitalised value of Michavaram and the determination of this claim involves a re-adjustment of the terms of the Kanom lease, the tenant's claim to reduced Michavaram on account of the increased assessment may be taken into consideration by the court in the present case.

The general principles to be observed on the subject of regulating the enhancement or reduction of Michavaram at the periodical renewal of Kanapattam leases indicated. *Parameswaran* vs. *Narayanar*. 12. T. L. R., 107.

3. FORFEITURE OF TENANCY.

(*a*) *Waste*—

1.—A tenant who commits waste incurs forfeiture of the holding. *Sridharan Potti* vs. *Padmanaban*. 1. T. L. R., 80.

2.—*Wilful waste.*

It is a general proposition of law that a tenant committing wilful waste by cutting down fruit bearing and valuable trees without the consent of the Jenmi does thereby incur forfeiture, but it would be inequitable to lay down that the cutting of any kind of tree amounts to such wilful waste. If the tree belongs to a Jenmi or were of such a description as to cause material injury to the reversionary interests of the Jenmi, the tenant may then be said to be guilty of such act as would be sufficient, under the customary law, to work a forfeiture of the lease; but if the trees were those planted by the tenant himself and could be easily replaced without causing any diminution in the profits, which a Jenmi is entitled to, the tenant does not thereby render himself liable to be evicted, if it can be shown that he acted generally in a husband-like manner and towards the improvement of the property. *Krishnan* vs. *Uli*. 2. T. L. R., 18.

(*b*) *Non-payment of rent or other dues.*

1.—*Kanom lease—Ejectment—non-payment of rent for more than* 12 *years.*

Held that a tenant is not permitted to deny that his landlord had title at the time of the lease, is clear law.

Held also that Section 3 of the Royal Proclamation of 1042, does not expressly lay down the period at which the demand for payment of arrears of Michavaram should be made, but it simply

requires the Jenmi to make a demand at any time within 12 years during which the arrears accumulated. *Mathan* vs. *Sreevasuthevan Namburipad.* 5. T. L. R., 77.

2.—*Forfeiture of tenancy—Default to pay Michavaram, &c. Demand by Jenmi.*

Held that non-payment of the dues for 12 years in spite of demands made, works a forfeiture of the tenants' right of occupancy and that the legislature did not intend that the demand should be made at the commencement of the period of 12 years. *Kumaran* vs. *Chithrar Adithiri.* 8. T. L. R., 43.

3.—*Default to pay rent and dues—Partial deposit—Forfeiture of tenancy.*

Held that a Kanom tenant who wishes to retain his occupancy rights must deposit in Court the full amount of arrears due by him to the Jenmi up to the date of such deposit. A partial deposit, cannot be held efficacious to absolve the tenant from the penalty of forfeiture of his tenancy. *Krishnan Battathiri* vs. *Thomman.* 10. T. L. R., 132.

4. ALIENATIONS BY JENMI.

1.—*Kanom mortgage—Adukuvathu.*

The receipt of Adukuvathu by the Jenmi is the distinguishing character of a Kanom mortgage. A mortgage not providing for the payment of Adukuvathu to the Jenmi is revocable and does not come within the purview of the Royal Proclamation of 1042. *Vydianatha Aiyan* vs. *Sankaran.* 3. T. L. R., 27.

2.—*Simple lease and debt-bond executed by Jenmi—combined effect of. Construction of documents.*

Suit to recover land held by defendant on simple lease from a Jenmi. It is contended in answer to the claim, that as along with the lease-deed a debt-bond was executed by the Jenmi (plaintiff) for a certain amount advanced by the tenant (defendant), stipulating therein that the interest for the amount was to be deducted from the rent payable on the lease, the two deeds together import a Kanom transaction, whereby the lease became irrevocable except in the circumstances under which Kanom leases are, under law, determinable.

Held that the transaction is not a Kanom; and that the very fact that the loan was secured by a separate bond, and not set forth in the lease-deed itself as a consideration for the grant of the

lease, is cogent evidence that the parties did so to avoid even the possibility of the lease being construed as a Kanappatam. *Thomman* vs. *Jeyanthar.* 10. T. L. R., 52.

3.—*Mortgage by, subject to renewal, consent of other members—Effect of receipt of Michavaram by other members to prove their assent.*

See case under "Malabar Brahmins." 11. T. L. R., 1.

4.—*Simple mortgage by Jenmi—whether redeemable.*

A simple mortgage between a Jenmi and a tenant, with no stipulation in the document either for redemption or for renewal on payment of the customary dues periodically, is redeemable. (*Mamaroo* vs. *Neelan* VI. T. L. R., 10 followed.) *Krishnan* vs. *Narayanan.* 12. T. L. R., 90.

5.—*Redemption of mortgage.*

See case under "Burden of Proof." 3. T. L. R., 11.

JOINDER, OF PARTY.

See cases under C. P. C., Sec. 28. 1. T. L. R., 50.

and Appellate Court. 11. T. L. R., 180.

JUDICIAL OFFICER'S ACT.

See cases under "Damages."

JURISDICTION.

(1) Question of Jurisdiction.

(a) Generally.

(b) Wrong Exercise of Jurisdiction.

(2) Causes of Jurisdiction.

(a) Dwelling or residence.

(b) Causes of Action.

(i) Several Causes of Action.

(ii) Breach of Contract.

(iii) Negotiable instruments.

JURISDICTION OF CIVIL COURTS.

JURISDICTION OF CRIMINAL COURTS.

JURISDICTION.

(1) Question of Jurisdiction.

(a) Generally.

See cases under C. P. C., Sec. 462, 471 and 482. VI. T. L. R., App. 1.

JURISDICTION.—(*Continued*).

1.—*Aliens.* Residence in Travancore under circumstances raising the presumption that it is not casual, and possession of property within Travancore are sufficient to give Jurisdiction to the Travancore Courts over persons who are not born subjects of His Highness the Maha Raja of Travancore. *Ittyavara* vs. *Harihara Aiyen.* 3. T. L. R., 35.

2.—*Value of the suit as set up by defendant.*

Held that it is the value of a claim as stated by plaintiff and not the value of the claim or property which according to the nature of the defence might eventually be found to be at stake that determines the grade of tribunals before whom a particular suit is to be brought. *Thayaru Potti* vs. *Narayanan.* 1. T. L. R., 98.

3.—*Admissibility of plea as to want of, in appeal.*

Held that it is wrong to allow, in appeal, a plea of want of jurisdiction to be raised for the first time.

Held also that the onus of proving such a plea, when taken in proper time, is on those who urge it, the law making a presumption in favour of the existence of jurisdiction, until the contrary is shown. *Palany* vs. *Sivakami.* 4. T. L. R., 69.

4.—When the suit is for the removal of the Karanaven of a Malabar Tarawad, the question of jurisdiction depends upon the extent of the Tarawad property involved in the suit. *Bagavathi* vs. *Iyappen.* 7. T. L. R., App. 51.

(*b*) WRONG EXERCISE OF JURISDICTION.

1.—*Determination of pecuniary Jurisdiction.*

The amount of the original claim and not that of the appeal, is to be taken into account for the purpose of determining the pecuniary jurisdiction of the court. *Jeyanather Potti* vs. *Thommen.* 3. T. L. R., 47.

2.—*Pecnniary jurisdiction.*

Held that, in deciding questions of jurisdiction, the court has only to look to the value of the interest *claimed by the plaintiff* and not the value of the interest that may have to be incidentally considered and determined in adjudicating upon the cause of action set forth in the plaint. *Parvathiammal* vs. *Narayanan.* 4. T. L. R., 21.

3.—*Razinamah.*

Held that where an appeal is pending in a superior court and the parties agree to compromise befere a lower court to which the

suit has been remanded, the Judge of the latter has no Jurisdiction to pass an order affirming the Razinamah. *Mariya* vs. *Mathen.* 4. T. L. R., 25.

4.—*Pecuniary jurisdiction of Munsiff—valuation of suit—Decree purchased at court-sale—suit for execution of.*

Suit for a declaration that plaintiff is entitled to execute a decree for Rs. 10,000 purchased by him at court-sale for Rs. 200.

Held that a Munsiff is incompetent to take cognizance of the suit, the amount of the decree, the subject-matter of the suit—being above Rs. 500.

Held also that the question whether the proper institution fee has been paid on the plaint, should be decided by the court competent to try the suit.

Semble. Institution fee must be paid on the market-value of the decree; and until the contrary is shown, the amount of the decree must be taken as the value thereof. *Venguaiyen* vs. *V. P. C. Narayanan.* 10. T. L. R., 30.

5.—*Suit for money of 50 Rs. value and less, but involving question of right to land. Secs.* 10 *and* 11 *of the Civil Courts Regulation* (*I of* 1057).

Suit for recovery of 100 fanams as damages on account of defendant's felling a tree. The disposal of the suit required an investigation into the plaintiff's title to the land on which the tree stood. The Munsiff dismissed the suit, while the Zillah Judge gave a decree for plaintiff.

Held following the FULL BENCH Ruling, dated 10th Kanni 1065, which was based on a construction of Sections 10 and 11 of the Civil Courts Regulation, that no special appeal lies against the decree of the Zillah Court as the suit, though it involves a question of right or title to immovable property, is one falling within the small cause jurisdiction of the Zillah court.

Held also that the nature of the suit is not altered by plaintiff's having paid institution fee on the value of the land, in addition to the fee on the amount sued for. *Mallen* vs. *Mathen.*

10. T. L. R., 54.

6.—*Determination of—Regulation III of 1068* (*suits valuation Regulation*).

Held that where a suit was instituted before the suits valuation Regulation III of 1068 came into force, the jurisdiction of a court was determined by the market-value of the property involved in the litigation. *Krishnan Potti* vs. *Vasudevar.*

12. T. L. R., 157.

JURISDICTION.—(*Continued*).

7.—*Pecuniary Jurisdiction—attaching creditor—attachment—clause* 7, *sec.* 4 *of the Court Fees Regulation—suits valuation Regulation, sec.* 2.

Held that an attaching creditor does not "get" the property attached, but only prohibits alienation of the property by the debtor until the decree-debt is paid and discharged. No sooner the debt is paid than the creditor ceases to have anything to do with the property.

Held also that clause 7, section IV of the Court-fees Regulation provides that the amount for which the attachment is made is the value of the suit; that though that is the value for the purposes of Court-fees, there is no express provision of law anywhere that a different value should be taken for the purposes of jurisdiction; that the suits valuation Regulation, section 2, accepts the court-fee valuation as the one for the purpose of jurisdiction also; that the practice of courts had been before that Regulation came into force to take the amount of the decree or the value of the property, whichever was smaller, as the value of the suit for both purposes, and the Regulation only affirmed that practice.

Held further adopting the dictum laid down in A. S. No. 253 of 1067, that the District Court had no jurisdiction to entertain and try the present suit which is below its pecuniary jurisdiction.
Govindan vs. *Easwaran.* 12. T. L. R., 188.

8.—*Suit for declaration of managership of joint family—court fees Regulation, sec.* 4, *clause V, sub-clause* (*d*)—*competency of a Judge to reverse another Judge's order as to valuation—Effect of the irregularity on the decree passed.*

Held that where a Judge has judicially decided the question of valuation of a suit, it is not competent for a successor in the hearing of the case to reopen the question, but where the question has been reopened and the first order set aside, the irregularity cannot be treated as one sufficient to set aside the decree that followed, unless the second order as to valuation is itself wrong.

Held also that in a suit for a declaration of plaintiff's right to hold and manage property which jointly belongs to himself and others, institution fee should be levied on the market-value of the subject matter of the suit, under sub-clause (*d*) of clause V of Section 4 of the Court-fees Regulation. Such a suit is not analogous to one for removal of a Karanaven of a Marumakkattayam Tarawad.
Kumaraswamy vs. *Veeriaperumal.* 12. T. L. R., 44.

(2) CAUSES OF JURISDICTION.

A. *Dwelling or Residence.*

JURISDICTION.—(*Continued*).

——*Where defendant has more than one dwelling—Presumption—Vakils, Duties and liabilities of—Limitation—Suit for damages, Negligence to execute a decree.*

Where a person has his permanent residence at one place and his ancestral house at another, (i) an intention to return to the ancestral house may be presumed in the absence of evidence to the contrary, and (ii) either of the dwellings may be taken as his residence for the purpose of determining jurisdiction. Where a Vakil is engaged by a client, his position is not that of an ordinary agent created by the contract of the parties. He has his statutory duties and privileges. The limitation for an action by a client against a Vakil, for damages, under the old Limitation Regulation is 6 years. The prescribed period of limitation runs from the date on which the decree which the Vakil undertook to execute became barred by his negligence. *Ramanatha Row* vs. *Dharmaraja Aiyan.* 8. T. L.R., 39.

(B) CAUSES OF ACTION.

(1) *Several causes of action.*

——*Sec.* 7 *old C. P. C.* Where several causes of action are joined together, each of which is within the jurisdiction of the Munsiff's Court, but the entire claim exceeds its jurisdiction, the Zillah Court is not incompetent to try such suit. *Narayanan* vs. *Sivaramakrishna Aiyan.* 3. T. L. R,. 30.

(2) *Breach of Contract* :

——Filing plaint in a wrong court. *Held* that a suit founded on a breach of contract may be brought in any of the three following courts :

(*a*) The court within whose jurisdiction the contract was made.

(*b*) The court within whose jurisdiction the breach of such contract took place.

(*c*) The court within whose jurisdiction the defendant resides. When a Court finds that it has no Jurisdiction to entertain a suit it ought to return the plaint to the plaintiff to enable him to present it in the court that has Jurisdiction. *Narayana Aiyan* vs. *Suppan.* 1. T. L. R., 96.

(iii) NEGOTIABLE INSTRUMENTS.

——*Suit on promissory note—Place of payment not specified—cause of action—suit by indorsee of promissory note—Plea of discharge to original promisee.*

JURISDICTION.—(*Concluded*).

A residing at Quilon executed to B carrying on business at Alleppy a pro-note which specified no place of payment. B indorsed the pro-note to C who sued in the Alleppy Zillah Court for recovery of the money. A objects to the jurisdiction of the Alleppy Zillah Court and pleads discharge to B.

Held that in the absence of any mention of a specific place for payment, the reasonable inference would be that the payment should be made where the holder of the note permanently resides or carries on business; that where there is no express covenant, the presumption of law is that the obligor is bound to seek the obligee and tender the money at the residence or place of business of the latter; and that, consequently, the cause of action must be taken to have arisen within the jurisdiction of the Alleppy Zillah Court, and the objection as to jurisdiction is unsustainable.

Held also that a promissory note is a negotiable instrument wherein the property could be transferred by endorsement and delivery thereof; and that, therefore, the plea of discharge cannot affect C's claim as against A. *Velayudan* vs. *Ramaswamy Aiyen*.
11. T. L. R., 184.

JURISDICTION OF CIVIL COURTS.

1.—*Rights to offices.*

Rights to offices are real property under the Hindu Law and, as such, suits in respect of them are cognizable by civil courts. *Cunju* vs. *Krishnan*. 3. T. L. R., 56.

2.—*Office of Purohit.*

Held that a suit for declaration of title to hold the office of Purohit is cognizable by the civil courts and that pecuniary claims in respect thereof are enforceable in a court of law. *Damodaran Nampiathy* vs. *Vasudevan*. 4. T. L. R., 37.

3.—*Cases relating to Public revenue—Nirthal lands.*

Interpretation of the terms "full assessment" in the Proclamation of 1057 relating to Nirthal lands.

Held that civil courts can take cognizance of suits relating to public revenue, if the revenue executive officers could be shown to have acted contrary to any existing right acquired under the laws promulgated by the Government in its legislative capacity.

Held also that Nirthal lands or lands abandoned by the original holders as unfit for cultivation and allowed to lie waste, are, in this state, treated as Sirkar lands and dealt with by them as other lands are, in which the proprietary right is vested in them, *i. e.*,

the moment the act of abandonment on the part of the original proprietor takes place, the land changes its original tenure and becomes, for the purposes of assessment of Revenue, what is called Sirkar lands.

Held further that there is nothing in the Proclamation of the 5th Makarom 1057 relating to Nirthal lands to indicate that the term " full assessment" was therein used to denote the original assessment entered in the Ayacut accounts. *Chithambarathanoo* vs. *Sirkar.* 8. T. L. R., 26.

4.—*Kandukrishy lands.*

Under the C. P. C., Sec. 7 Civil courts have Jurisdiction to try suits relating to Kandukrishy lands. *Govindan* vs. *Sirkar.* 9. T. L. R., 142.

5.—*Viruthi lands.*

Held by a FULL BENCH that, under the Royal Proclamation dated 4th Idavom 1061, civil courts have no jurisdiction to try suits relating to *Viruthi* lands whether alienated or unalienated. *Neelacandan* vs. *Peruman.* 9. T. L, R., 169.

6.—*Viruthi lands. Scope of the Full Bench ruling in* 9. *T. L. R.*, 169.

The FULL BENCH ruling in S. A. No. 251 of 1067-(IX T. L. R., 169) that " under the Royal Proclamation dated 4th Idavom 1061, civil courts have no jurisdiction to try suits relating to Viruthi lands, whether alienated or unalienated," applies only to such (Viruthi) lands as have been settled and granted under para 6 of the said Royal Proclamation, and not to those remaining unsettled. *Kunjan* vs. *Raman.* 10. T. L. R., 60.

7.—*Competency of civil courts to take cognizance of suits relating to Sirkar's acts in enforcement of its legislative enactments—misjoinder. Munambom—nature of Sirkar's rights over—Abkary Regulation.*

Plaintiffs, ryots of Munambom, sue to obtain a declaration that the Sirkar is not entitled to levy Abkary dues from them, and to recover damages for preventing them from manufacturing liquor. The defendant (Sirkar) contends that the suit is bad for misjoinder, and that it is not maintainable in a Civil Court, as the Regulation relating to the levy of Abkary dues (I of 1054) was enacted and enforced by Government in the exercise of its sovereign powers.

Held that though the passing of a legislative enactment by the Sirkar, in the exercise of its legislative functions cannot be questioned in a Civil Court, the enforcement of that enactment in the performance of its (Sirkar's) administrative duties, against a sub-

ject or class of subjects, who or which claims an exemption from the operation thereof, may be questioned in the Civil Courts.

Held also that though each of the Plaintiffs claims a distinct sum as damages, nevertheless as the cause of action is one which is common to all of them, and as all contend for one and the same principle and have a common interest in the suit, the objection as to misjoinder is clearly unsustainable.

Held further that by purchase from the Dutch East India Company, both the proprietory and sovereign rights over Munambom passed to the Sirkar and that, consequently, the Sirkar had the right to enforce the Abkary Regulation (I of 1054) in that tract also. *Raman* vs. *Sirkar.* 8. T. L. R., 128.

8.—*Puthuval—Reclaimer and Sirkar registree—suit as between—Reclaimer's claim to compensation.*

Suit by the first taker of certain Sirkar waste land for cancellation of a registry of the land made by the Sirkar in the name of another, and for recovery of the land, or in the alternative, for recovery of a certain amount as compensation for the reclamation of the land and improvements effected thereon. The Zillah Judge held the suit not maintainable. Plaintiff appealed.

Held that the suit, in so far as it seeks the cancelment of the Sirkar Registry, and the recovery of the land was rightly held not maintainable, that, as until recently no consent of the Sirkar authorities was needed to reclaim Sirkar waste land for cultivation and the recognized usage of the state had been to register waste lands in the name of the first taker, it is but equitable that where a registry is made in the name of a person other than the first taker and improver, the latter should be enabled to recover compensation for improvements made by him; and that no law debars the cognizance of such claims by Civil Courts, and plaintiff's claim for compensation should have been enquired into by the Lower Court. *Pylo* vs. *Kela and Sirkar.* 10. T. L. R., 85.

9.—*Compensation for land assumed by Sirkar. Suit—jurisdiction of Civil Courts to assess the amount of compensation—rules passed by the Dewan on the 25th November 1866.*

A suit against the Sirkar for compensation for land assumed for public purposes, is governed not by Art. 10, but by Art. 95 of the Limitation Regulation, and will, therefore, be barred only if brought after 3 years from the date of the assumption of the land.

The Civil Courts have jurisdiction to assess the amount of compensation payable, in such suits, and are not prohibited from doing

so by the Rules issued by the Dewan on the 25th November 1866, as nothing but a Royal Proclamation or a Regulation passed under Sign Manual can affect the jurisdiction of Courts.

Even if the rules of 1866 are granted to have the force of law, they cannot affect the general jurisdiction of Courts, unless it is shown by the Sirkar that the special procedure therein laid down has been strictly followed. *Sirkar* vs. *Gopalan.*

10. T. L. R., 32.

JURISDICTION OF CRIMINAL COURTS.

1.—JURISDICTION—*Offence committed by a member of the British Resident's suit within the Residency. Defect in the frame of charge—sufficiency of or otherwise to invalidate a conviction. Criminal breach of trust by a servant—Burden of proof. Conviction in the same case for offences under Sections* 406 *and* 408, *I. P. C.—Superfluity of.*

The accused, a subject by birth of the Travancore State, is charged with having, while attached to the staff of the British Resident in Travancore as Treasurer, embezzled from the Residency Treasury at Trivandrum certain currency notes which, in his official capacity, he had custody of. The question having arisen *inter alia* whether the Courts of Travancore have jurisdiction to try the accused.

Held that the Courts of this State are fully competent to try the case as the Residency grounds where the offence was committed were not ceded to the British Government.

That the privileges of an ambassador's staff are allowed for his convenience and comfort and may be waived by him : and whereas in the present case, the prosecution is started under his order, the privilege cannot be pleaded in bar of the jurisdiction of the Local Courts.

Held also that the defect to specify the nature of the property embezzled with sufficient accuracy is not one that can be held fatal to the validity of a conviction unless it has prejudiced the accused in his defence.

Held further, that in the case, the prosecution is not bound to prove the actual misappropriation of the notes, but that the charge may be proved by evidence of the receipt by the accused of money which is not duly accounted for.

Held also, that where a conviction is entered under Section 408 of the Penal Code for criminal breach of trust by a servant, a separate conviction for simple breach of trust under section 406 is superfluous. *Sirkar* vs. *Govindasamy Moodaliar.*

11. T. L. R., 57.

2.—*Criminal Court. Disobedience to Revenue summons. Effect of Regulation V of* 1063. *Notification empowering Samprathi to issue summons. Section* 174, *Penal Code.*

The ordinary Criminal Courts have jurisdiction to entertain cases of disobedience to Revenue summons. The Notification of 1062 has been superseded by the later Regulation V of 1063 dealing specially with summons in connection with Revenue matters. Disobedience to Samprathi's summons cannot be punished under Section 174 of the Penal Code, the Samprathi not having been duly empowered under the said Regulation to issue summons. 8. T. L. R., App. 15.

3.—*Of the Sessions Court—Orders of the Magistracy.*

A court of sessions has no jurisdiction to interfere with orders passed by the Magistracy while a case is under the investigation of the Police. 3. T. L. R., App. 38.

4.—*District Magistrate's authority to set aside Sub-Magistrate's order of discharge.*

Held that a District Magistrate has no authority to set aside a Sub-Magistrate's order of discharge, on his own authority; and that if he considers an order of discharge improper, he should refer the case to the High Court under Section 297, Criminal Procedure Code. 8. T. L. R., App. 35.

5.—*District Magistrate's competency to entertain fresh complaints in respect of cases dismissed by Sub-Magistrates under Section* 215. *Retrial of case dismissed.*

Held that a District Magistrate is competent to entertain a *fresh* complaint in respect of cases dismissed by a Sub-Magistrate under Sec. 215 and enquire into or try it *himself on fresh evidence*, but that he is powerless to order the retrial of a case by a Subordinate Magistrate who had dismissed it under Section 215.
8. T. L. R., App. 72.

6.—*District Magistrate's competency to order fresh enquiry in case referred by the Police as false. Recording of evidence—Magistrate's duty in.*

Where a complaint is referred by the Police as false and a Magistrate passes an order thereon, the District Magistrate may under section 298 Cr. P. C. order such complaint to be enquired into, without reference to the High Court.

Whenever a Magistrate does not either record the evidence himself or make a memorandum of the substance of the evidence given before him, he must state in the diary the reasons for his inability to do so. 9. T. L. R., App. 18.

JURISDICTION OF CRIMINAL COURTS.—(*Continued*).

7.—*Magistrate's competency to revise orders passed by his predecessor regarding disposal of Thondies.*

Where a Magistrate doubted his competency to pass proceedings regarding the disposal of Thondies in Criminal Cases disposed of by his predecessor in office :

Held that a successor cannot revise *the orders* of his predecessor, but where the latter, has, by oversight, *omitted to pass orders*, it is the duty of the former to supply the omission, since the Court continues to be the same notwithstanding the change in the officers who preside in it. 12. T. L. R., App. 29.

8.—*Magistrate having personal knowledge of the facts of a case coming before him.*

A Magistrate having personal knowledge of the facts of a case, is incompetent to try the same and ought not to be entrusted with its trial. *Sirkar* vs. *Iyappen.* 9. T. L. R., 119.

9.—*Penal Code Sec. 174—offence under. Magistrate's competency to try offence under Section 174 committed in contempt of his own authority. Sec. 365, Cr. P. C. paras 1 and 2.*

Held that a Magistrate is competent to try an offence under Sec. 174 of the Penal Code committed in contempt of his own authority, if the offence is otherwise triable by him. Para 2 of Sec. 365 of the Criminal Procedure Code introduced an exception to the general rule enacted in the first para and vests in every Magistrate the power of trying cases of disobedience of his own processes, if he is otherwise competent under the Code to take up the case.

10. T. L. R., App. 43.

10.—*Concurrent jurisdiction—Reference of cases to second and third class Magistrates by 1st class Magistrates.*

Cases triable by 1st class Magistrates should not, as a rule, be referred to 2nd and 3rd class Magistrates simply on the ground that the Sessions Court has concurrent jurisdiction.

3. T. L. R., App. 34.

11.—*Magistrate—Adjudication of claims to property.*

Held that in cases of possession of land, Magistrates are not empowered by the Code to adjudicate upon claims to property, but only to find who is in actual possession thereof.

5. T. L. R., App. 3.

12.—*Cr. P. C. Secs. 17 and 409. Jurisdiction—2nd class Magistrate—Cognizance of offence without complaint or Police report—Effect of the irregularity.*

Where an offence of forgery was disclosed in an enquiry into a petition presented before a 2nd class Magistrate and the Magistrate, at his own instance, took cognizance of the offence and committed the case to the Sessions Court for trial which ended in conviction :

Held that under Sec. 170 of the Criminal Procedure Code, 2nd class Magistrates cannot take cognizance of an offence except upon a complaint or a Police report.

Held also that the entire proceedings in the case are, under Sec. 409, *ab-initio* void by reason of the above defect and the conviction illegal.

[The difference between the British Indian and Travancore Criminal Procedure Codes in the matter pointed out]. *Sirkar* vs. *Konnan.* 12. T. L. R., 169.

13.—*2nd class Magistrate's power to refund whole or portion of fine realized.*

Held that a 2nd class Magistrate has no power to refund the whole or any portion of the amount realized by him and that the power of remission could be exercised by him only before the penalty is realized. 8. T. L. R., App. 66.

14.—*Criminal intimidation to cause death. Jurisdiction of 2nd class Magistrate. Retrial by 1st class Magistrate.*

In a case where the accused is alleged to have addressed words to certain relatives of complainant, threatening to kill the latter and the Subordinate Magistrate held that the complainant was incompetent to prefer the charge, as the threat was not addressed to him personally :

Held that the complainant need not have personal knowledge of the facts constituting the offence, but need only prove his charge by the testimony of those who have personal knowledge of the facts.

That as the threat was to cause death, the 2nd class Magistrate had no jurisdiction to try the case, and the District Magistrate was wrong in sending it to him for trial.

And that the dismissal of the complaint by the 2nd class Magistrate on the ground, *inter alia*, of want of jurisdiction, does not prevent the trial of the accused by a 1st class Magistrate.

10. T. L. R., App. 17

JURISDICTION OF CRIMINAL COURTS.—(*Concluded*).

15.—(*Criminal*) *Ouster of—Personal knowledge of facts of the case.*

Held by the Chief Justice and Mr. Cosby Justice (Mr. Kunhiraman Nayar Justice dissenting) that a Magistrate having personal knowledge of the facts of a case is incompetent to try the same.

4. T. L. R., 93.

16.—*District Magistrate's power to order a Subordinate Magistrate to restore a Sessions case to his file affirmed.*

Criminal Circular No. 3 *of* 1061. 4. T. L. R., App. 10.

17.—*Of High Court to revise Judgments of acquittal on points of law affirmed.*

Criminal Circular No. 6 *of* 1060. 4. T. L. R., App. 2.

18.—*Of 2nd and 3rd class Magistrates to try offences of smuggling tobacco.*

2nd and 3rd class Magistrates are incompetent to try offences of smuggling tobacco.

Criminal Circular No. 7 *of* 1060. 4. T. L. R., App. 3.

19.—*Incompetency of 3rd class Magistrates to try certain offences.*

See Penal Code, Secs. 380 and 381.

——— Sec. 429.

——— Sec. 269.

20.—*Territorial—Defect of*:

See Cr. P. C., Secs. 8, 10, 160, 410, also—S. 175.

KALAM AYANDU—*Import.*

Held that the expression Kalam Ayandu, as used in old deeds means 20 years. *Vasudevan Ilayathu* vs. *Keshavan.*

2. T. L. R., 57.

KALAM MUVANDU—*Effect of the expression* :

The use of the expression *Kalam Muvandu* is generally a distinguishing mark of Kanom deeds. *Mamaroo* vs. *Neelan.*

6. T. L. R., 10.

KALIPATTAM TENURE—*Nature of.*

Held that lands granted on Kalipattam tenure, are resumable by the Sirkar at its will; and that the Royal Proclamation of 21st Idavam 1,040 converting Sirkar pattam lands into private property of the respective lessees does not apply to such holdings. The grant on *Kalippattam was* intended to confer upon the grantees a right to enjoy certain privileges, such as fishing, soaking in water,

KALIPATTAM TENURE.—(*Concluded*).

cocoanut husks, &c., on the lands which form the bed of a reservoir (*Kali*). *Sirkar* vs. *Moideen Kannu*. 9. T. L. R., 198.

KALARI—*Property dedicated to Kalari—Religious endowment, alienation.*

Held that where under a family compact, property belonging to a Tharwad is dedicated to the *Kalari* (household deity), the property thenceforth ceases to be property of the Tharwad except or otherwise than, as representing the *Kalari* or household deity and can be encumbered if at all, only for purposes essential to the *Kalari*. *Kurumpa* vs. *Kannan*. 10. T. L. R., 72.

KANOM——*Vide* cases under "Jenmi and Kudyan."
2. T. L. R., 49. 2. T. L. R., 58.
3. T. L. R., 27. 4. T. L. R., 4.

KARTHA——not a Jenmi. See "*Jenmi and Kudyan.*"
1. T. L. R., 2.

KIZHI——*Status of—Samooham—Maintainability of suit*: *Vide Civil Procedure Code, Secs.* 415 *and* 417.
12. T. L. R., 145.

KONKANI——*Loss of caste by incarceration in Jail. Vide* 'caste'. 11. T. L. R., 86.

KULIKANOM——*Mortgage without possession. Mortgagee's right to sue for mortgage amount.* Vide 'Mortgagee'. 9. T. L. R., 82.

KULIKANOM LEASE——*Default to improve the land—non-payment of rent—forfeiture.* '*Vide* Landlord and tenant'.
11. T. L. R., 187.

LANDLORD AND TENANT.

1.—*Denial of landlord's title—creation of relationship of landlord and tenant.*

Held that the doctrine that a tenant cannot be allowed to deny the landlord's title, applies only where the relation of landlord and tenant has been created. *Narayanan* vs. *Narayanan*.
1. T. L. R., 7.

2.—*Reclamation.*

Held (following the ruling in A. S. No. 223 of 1061) that reclamations made by tenants or mortgagees belong to the landlord or mortgagor, as the case may be, all that the tenant is entitled to being the cost of such reclamation. *Chekoo* vs. *Narayanar*.
9. T. L. R., 48.

x) Kuli Kanom 15 p 86

LANDLORD AND TENANT.—(*Continued*).

3.—*Rent—arrears of. Improvements—Set off. Hypothecation of tenant's right to value of improvements.*

Suit by a landlord against his tenant and hypothecatee of his (tenant's) right to value of improvements, for redemption together with arrears of rent. Plaintiff, the landlord, claims to set off the value of improvements against arrears of rent due to him.

Held that arrears of rent are, at the determination of a tenancy, customarily deducted from the amount due to the tenant by the landlord for improvements effected upon the property.

Held also that a tenant cannot be allowed to defeat his landlord's rights by pledging or hypothecating his (tenant's) claim for compensation, to a third party, before the claim is matured, which will only be at the time of ejectment. *Augustious Kathanar* vs. *Kakki.* 9. T. L. R., 127.

4.—*Denial of landlord's right by tenant, adverse possession for 12 years after denial. Effect of Kanom by non-jenmi—Redemption.*

Where a tenant asserts an adverse right against his landlord, in respect of his tenure, and holds the land under such right to the knowledge of his landlord for over twelve years, the landlord is barred from disputing the right asserted by the tenant.

Semble.—A Kanom lease granted by a non-Jenmi is redeemable at any time after 12 years from the date of the lease and within 50 years from the expiration of that period (*i. e.*, the 12 years). *Kerala Varman Thirumulpad* vs. *Krishnan.* 10. T. L. R., 42.

5.—*Kuzhikanom lease. Default to improve the land—non-payment of rent—Forfeiture.*

In the case of Kuzhikanom lease without any security taken from the lessee, but granted on the terms of his properly planting the land and punctually paying the annual rent stipulated, and, on default of either, to surrender the land.

Held that the failure to plant one small portion of the land is not waste sufficient to entail forfeiture of the tenancy.

And that the default to pay rent is sufficient ground to determine the tenancy, in spite of the tenant's right to hold for 12 years under the Kuzhikanom lease. *Aiyappen* vs. *Kochu Auseph.* 11. T. L. R., 187.

6.—*Mortgagor and mortgagee—Set off of arrears of rent against mortgage debt. Demand for rent—Tenant's duty to offer to pay rent—Interest on arrears of rent.*

LANDLORD AND TENANT.—(*Concluded*).

Held that in the case of a mortgage providing for payment of Michavaram annually, the mortgagor is entitled under the law of mortgage to set off the arrears of Michavaram due to him up to the date of redemption, against the mortgage-debt due by him to the mortgagee.

Held also that it is as much the duty of a landlord to demand rent as that of the tenant to offer to pay. The law requires the debtor to seek out the creditor to pay the debt.

Held further that interest is awardable on arrears of rent. *Matthan* vs. *Govindan.* 11. T. L. R., 215.

7.—*Presumption from long possession and payment of rent—Plea of perpetual tenure—Burden of proof.*

Held that the ordinary presumption of law arising from long possession and payment of rent, is that the tenancy is from year to year, and it is for the tenant who sets up a permanent tenure to rebut the presumption by proof of his contention. *Neelacandan Nampuri* vs. *Vasudevan Nampuri.* 12. T. L. R., 33.

8.—*Set off—Michavaram and value of improvements—Past bearing trees—Tenant's right to.*

A landlord is entitled, at the time of eviction, to set off the arrears of Michavaram, &c., due to him against the value of improvements found payable to the tenant.

Past bearing old trees must go with the land to the landlord at the time of eviction, and cannot be recovered by the tenant. *Keshavan* vs. *Krishnan.* 12. T. L. R., 194.

See cases under "Jenmi and Kudyan."
See also "Improvements." 10. T. L. R., 7.

See also "Devaswom." 12. T. L. R., 138.

LEASE—*Registration of lease-deed.*

1. A lease-deed reserving an annual rent, and not merely the payment of a certain sum for one year's rent, is compulsorily registrable. *Bhagavati Pillai* vs. *Rahuthan.* 8. T. L. R., 49.

2.—Registration is compulsory in respect of a document of lease, which reserves a yearly rent but specifies no term. *Padmanabhen* vs. *Madevi.* 3. T. L. R., 32.

LEAVE.—*Application for, and availing of, by Judges. Civil Circular No, I of* 1061. 4. T. L. R., App. 17.

LIBEL—*Publication—Privilege—Malice in law.*

The passing of a manuscript containing defamatory matter through the hands of a clerk for the purpose of copying it, or through those of a compositor in a printing office for the purpose of printing it, is sufficient to constitute a publication to those persons, if they are capable of understanding the matter delivered to them.

A man is deemed to publish whatever is published by his authority.

Every false and unprivileged publication in writing, which has a tendency to injure a man in his occupation, or to injure his character or credit, domestic, professional or public, is a libel.

Libel is not actionable if the defendant can show that the libellous matter was true, or that it was privileged.

A communication, in order to be privileged, must be one made *bona fide* upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, and made to a person having a corresponding interest or duty, although it contains criminatory matter.

Malice in law is the doing of a wrongful act intentionally without just cause or excuse, and is to be presumed where the words said to be libellous are found to be untrue and their publication not justified. *Swaminatha Pillai* vs. *Venkatagiri Sastrial.*

12. T. L. R., 72.

LIMITATION (REGULATION II OF 1062).
(OLD REGULATION III OF 1040).

SEC. 2.—*Sirkar's claims—Regulation III of* 1040 *and II of* 1062.

The old Limitation Regulation did not restrict the period for enforcement of the Sirkar's rights; and a claim to execute a decree, acquired while that law was in force, cannot be affected by anything contained in the new Regulation as no law can have retrospective effect unless it is so clearly expressed by the legislature. And Section 2 of the new Limitation Regulation, excepts titles already acquired from the purview of that Regulation.

9. T. L. R., App. 2.

SEC. 5.(1)—*Held* that in calculating the period of limitation the time during which the Courts are closed for vacation should be excluded. *Rengaswamy Mudaliar* vs. *Sirkar.* 5. T. L. R., 85.

(2)—REVIEW—*Court-fee—Delay—Court Holiday*

Where a Review petition was presented to the Court on the second day after the expiry of the three months prescribed by

LIMITATION.—(*Continued*).

Article 2 of Schedule No. 1 of the Court-fees Regulation (I of 1062) the two previous days being holidays, and the petitioner claimed exemption from liability to pay the full fee leviable under Art. 3 of the same Schedule by the provisions of Section 5 of the Limitation Regulation (II of 1062).

Held by a FULL BENCH that the provisions of the Limitation Regulation cannot be imported into those of the Court fees Regulation, in the absence of express legislative sanction. And that in the present state of the law, the Review petition can be admitted only on payment of the full fee prescribed by Art. 3.

10. T. L. R., App. 1.

SEC. 7. (1)—*Suit by minor.*

A suit by a minor to cancel a sale should be brought within three years after attaining majority. The age of majority as fixed by the common law of Travancore, Syrian Christians not excepted is 16 years. *Powlo* vs. *Thoma.* 8. T. L. R., 22.

2.—*Suit by minor after attaining majority—Revival of barred right by the new Limitation Regulation—Burden of proof.*

[Suit to set aside a sale executed during the minority of the plaintiffs.]

Under Section 9 of the old Limitation Regulation as also under Section 7 of the new Regulation, the suit should have been brought within 3 years of the cessation of the disability consequent on the plaintiff's minority.

A right so barred under the old Regulation, will not be revived by the new Regulation. The burden of proving that the disability of plaintiffs as minors, ceased only within 3 years preceding the date of suit, is on themselves. *Kadir Sa Lebbai* vs. *Kassim.*

9. T. L. R., 185.

3.—*Suit on behalf of minor by next friend or guardian.*

The right conferred upon a minor by Section 7 of the Limitation Regulation, of bringing suits within 3 years of his attaining majority, is not lost or forfeited simply because the suit is brought in his name during his minority by his next friend or guardian. *Arumugam* vs. *Pathummal.* 11. T. L. R., 165.

4.—*Malabar Tarwad—Competency to question alienation.*

Where, in a Malabar Tarwad, the adult members who were competent to contest an alienation of Tarwad property neglected to do so for a period of 12 years, it is not competent to a member who happened to be a minor at the date of the alienation to question

its validity after the expiry of that period. *Held also* that the right to bring an action to invalidate the act of a Karnaven is the right of the Tarwad. *Parameswaran* vs. *Mathan.*

4. T. L. R., 34.

5.—*Sale by Karnaven of Marumakkathayam Tarwad—suit to cancel, by member who was a minor on date of sale.*

In a suit to set aside a sale by the Karnaven, of immoveable Tarwad property by a member who was a minor at the time of the sale ; *Held* on the authority of the decision in *Parameswaran* vs. *Chanda Pillai Mathan* reported at 4. T. L. R., 34, that the suit having been brought 12 years after the date of the sale is barred. *Held further* that the minor members of a Tarwad are concluded by the transactions entered into by adult members, in the absence of fraud. *Kesavan* vs. *Kesavan.* 12. T. L. R., 99.

SEC. 8.—*Execution of decree—Minors. Regulation V of* 1068, *Sec.* 6—*Representation by Guardian—Effect of.*

Nangali vs. *Krishnan followed.*

Where the minor sons of a decree-holder succeeded him before the expiry of the 12 years prescribed by Sec. 223 of C. P. C., but the decree was sought to be executed by them only after the lapse of such period.

Held following the ruling reported at 11. T. L. R., 11 that the provisions of the Limitation Regulation being a part of the law of procedure, governs also the provisions of the C. P. C.

That Sec. 8 of the Limitation Regulation (II of 1062) as amended by Sec. 6 of Regulation (V of 1068), has suspended the operation of limitation as against the minors during their minority. And that the fact of the minors being represented by their guardian, did not deprive them of the privilege specially conferred on them by law. *Kutti Paru* vs. *Kali.* 12. T. L. R., 149.

SECTION 10.

1.—*Money not specific trust property—Sec.* 3 *of Regulation III of* 1040.

A raised a loan by hypothecating a piece of property to B and C, the managers of a Matam. A died subsequently. B then sued A's brother for recovery of money by sale of the said property and the other assets of the deceased debtor. The defendant's chief plea was limitation. The Zillah Court over-ruled it and gave a decree for the plaintiff holding that, as the money was lent out of the funds of a Matam, it was " Specific Trust Property" under Section 3, Regulation III of 1040.

LIMITATION.—(*Continued*).

Held on appeal that "money is not Specific Trust Property" and that this being a suit not against the trustees or their representatives, but a suit by a trustee to recover money lent, it is subject to the ordinary law of limitation. *Arupokker* vs. *Viramony Aiyan.* 4. T. L. R., 35.

2.—*Inapplicablity of, to suits for recovery of Chitti money.*

SECTION 10 of the Limitation Regulation cannot be applied to suits for recovery of Chitti money, which cannot be treated as trust property. *Munden* vs. *Mahomed.* 11. T. L. R., 158.

SECTION 12.

1.—The day of application for, and the day of furnishing copy of decree should both be excluded. 1. T. L. R., App. 7.

2.—*Appeal against order dismissing for default.*

In determining whether an appeal against an order of dismissal for default is barred, the period during which an application for re-trial was pending should be excluded in favour of appellant.
8. T. L. R., App. 40.

3.—*Fractions of a day—Day on which cause of action arose.*

In calculating limitation, the day on which the cause of action arose is excluded as the law does not take notice of fractions of a day. *Raman* vs. *Raman.* 1. T. L. R., 76.

4.—*Delay in granting copy—Limitation.*

Held that the law making it obligatory on appellants to produce a copy of the Lower Court's judgment along with the appeal memo., unless it is dispensed with by the Appeal Court, the delay, even though it may be of more than 3 years, in granting the copy, is not delay for which the appellant is responsible. *The Dewan of Travancore* vs. *Kesavan Potti.* 12. T L. R., 198.

SECTION 14.

1.—To claim exemption under Section 12 of Regulation III of 1040, the claimant must have been prosecuting a suit upon the same cause of action *bona fide* in a Court of justice and the pendency of a petition praying for departmental enquiry is no ground for claiming such exemption. *Venkitarama Aiyangar* vs. *Ragunatha Row.* 2. T. L. R., 98.

LIMITATION.—(*Continued*).

2.—*Pendency of escheat enquiry.*

Held that as a revenue enquiry cannot be brought under any of the saving clauses of the law of limitation, it cannot be admitted as a valid plea to suspend the operation of that law. *Madavan* vs. *Sami Kannu.* 7. T. L. R., 147.

3.—*Proceedings in the Revenue Department.*

Proceedings in the Revenue Department have not the effect of saving the claim from bar by lapse of time. *Madaven Namburi* vs. *Lonappen.* 9. T. L. R., 54.

Sec. 18. *Ignorance of facts—Trial—Held* that plaintiff's ignorance of accrual of his right of action, unless brought about by the defendent's fraud will not prevent the time from running against him.

Held also that it is inexpedient to allow parties to go to trial on issues of fact without some distinct and specific allegation on the one side and denial on the other. *Nilakantan* vs. *Kunju Thevar Naicker.* 7. T. L. R., 117.

Sec. 19. See case under Art. 37. 10. T. L. R., App. 3.

1.—*Kanam—Acknowledgment of title—Renewal of.*

The weight of authorities is in favour of the view that an acknowledgment of title of the mortgagor, in order to fall within Clause 9 of Sec. 2 of Limitation Regulation, should be one made within 50 years of the mortgage, and this without reference to the question whether the acknowledgment was made before or after that Regulation came into force. *Raman Nampuripad* vs. *Madavan Nampuri.* 2. T. L. R., 49.

2.—*Mortgage—Effect of Poorakadam deeds—Revival of a barred right (Karanaven's power to acknowledge a barred mortgage.)*

Held by a FULL BENCH that Poorakadams or further advances cannot keep an existing mortgage alive by giving a fresh starting point for limitation; and that to keep the mortgagor's claim alive, a written acknowledgment of the mortgagor's title by the mortgagee under his signature is necessary. *Krishnan* vs. *Padmanaban.* 9. T. L. R., 166.

3.—*Redemption Suit—Acknowledgment. Secondary evidence as to.*

Held that under Section 19, oral evidence of the contents of a deed relied on as acknowledgment to save a suit for redemption of a mortgage, from the limitation bar, is inadmissible. *Parvati* vs. *Krishnan.* 11. T. L. R., 159.

4.—*Acknowledgment—Abstract of deposition in a Judgment.*

Held that an abstract of a deposition given in a judgment is not an acknowledgment under Section 19 of the Limitation Regulation, that under the provisions of Sections 64 and 65 of the Indian Evidence Act Secondary Evidence of a lost or destroyed acknowledgment is admissible but that such abstract does not fall under any of the clauses of Section 63 of the Evidence Act so as to be admissible as secondary evidence of the contents of the deposition. *Anandu* vs. *Bhagavati*. 12. T. L. R., 1.

SEC. 20.—See cases under Art. 37. 10. T. L. R., App. 3.

1.—*Mortgage.*

Certain property belonging to A's Tarwad was mortgaged to B's predecessors 86 years before date of suit. A sued to redeem the property with arrears of Michavaram. The Zillah Judge in appeal ruled that the claim is barred by limitation.

A specially appealed on the ground that an issue should have been raised and decided as to whether B paid Michavaram to A within the statutory period, as such payment would, it was contended, under para 2 of Section 20, save the claim from the bar.

Held that para 2 of Section 20 applies only to *receipts of produce* by the mortgagee but not to payments of Michavaram made by the mortgage to the mortgagor. The payment of Michavaram has not the effect of saving the equity of redemption from the bar of limitation. *Nilan* vs. *Sankaran*. 8. T. L. R., 74.

2.—*Effect of setting off Michavaram of debtor's land in creditor's possession towards interest.*

In a suit based on a bond which stipulated for appropriation by the creditor of a portion of the Michavaram payable by him on certain land he held on sub-mortgage from the debtor's Kanam lessee towards the interest payable by the debtor, and under which it was understood that the debt was to become payable on the termination of the creditor's sub-mortgage :

Held that the appropriation of a portion of the Michavaram towards discharge of interest does not amount to a payment of interest evidenced by writing, so as to give a fresh starting point for limitation under Section 20 of the Limitation Regulation. *Kandar* vs. *Sankaravarier*. 12. T. L. R., 37.

3.—*Payment of interest—Endorsement. Acknowledgment of debt.*

Payment of interest implies the existence of the liability as to principal, and an endorsement of such payment signed by the

party constitutes a valid acknowledgment. *Kerala Varma Tampan* vs. *Ramavarman Tirumulpad.* 1. T. L. R., 67.

SECTION 26. *Easement.*

See case under Easement. 10. T. L. R., 67.

SECTION 28.

1.—*Mortgage—Effect of Poorakkadam deeds—Revival of a barred right.*

Held that the old Limitation Regulation (unlike the new) only barred the remedy, but did not extinguish the right; and that a right, the action in respect of which has been barred, may be made the subject of a legally enforceable fresh contract. *Krishnan* vs. *Padmanabhen.* 9. T. L. R., 166.

2.—*Limitation Regulation (old and new.)*—Titles acquired under the old law—Release of attached property not sold—C. P. C. Section 229.

Held that the law of limitation (old as well as new) only bars the remedy in the case of debts, but does not extinguish the right (I. L. R. 5, Cal. 897); that Section 28 of the new Limitation Regulation applies only to specific property, but has no application to debts.

That titles acquired under the old law by attachment and other proceedings taken before the passing of the new Regulation are not affected by the latter statute (I. L. R. 2. Bomb. 148) and that the Code of Civil Procedure contains no provision for the release of attached property, if not brought to sale within a prescribed time. *In the matter of the petition of Ummamen.*

7. T. L. R., App. 57.

SECTION 29. *Standing crop whether claimable in possessory suit.*

Held that Section 29 of the Limitation Regulation II. of 1062 as amended by Regulation V. of 1068 entitles a person dispossessed of "any house, building or land" to recover possession of the same but that it does not apply to standing crops. *Raman* vs. *Madevan.*

12. T. L. R., 180.

——ART. 2: See cases under "POSSESSORY SUIT."

——ART. 7.

1.—*Held* that the limitation of one year provided for suits to set aside orders passed on claims preferred under Section 230 of the old C. P. C., has been held to apply to cases in which the claim

has been duly investigated, but where this has not been done, the claimant has twelve years. *Vasudevan Empran* vs. *Babbu.*

6. T. L. R., 114.

2.—*Application to set aside attachment of property.*

Held that where an application is made to set aside an attachment of property in the possession of the Judgment-debtor, on the ground that the debt was not contracted for purposes which would make it a charge on such property, and involving such other questions as the execution court is not competent to try, and the court refers the applicant to a regular suit, Section 230 of the (old) Civil Procedure Regulation has no application and the period of limitation applicable to cases of that nature is 12 years. *Padmanabhan* vs. *Parameswaran.* 7. T. L. R., 173.

3.—*Suit to cancel sale held in execution of decree. Sections 7 and 8 of the Limitation Regulation—Marumakkatayam law—Decree against Karavanen. Force of order under Section 230 old C. P. C.—Effect of as* RES-JUDICATA.

Certain property was attached in execution of a decree against a junior member of a Marumakkatayam Tarawad. The Karanaven and senior Anandraven objected to the attachment on the ground that the property belonged to the Tarawad and was not liable to be attached for a junior members' personal debt. The court executing the decree, found that the Tarawad had no right to the property. The property was subsequently sold in auction, and a suit is brought by a female member of the Tarawad to set aside the sale, one year after the date of the order dismissing the Karanaven's claim.

Held that when a claim is made under Sec. 230 of the old C.P.C. and on proper investigation it is disallowed, the sale of the property claimed, which may take place subsequently, is subject to the result of any suit that the unsuccessful claimant may bring within one year from the date of the disallowance of the claim. That, therefore, the suit is barred by one year's limitation under Art. 7 of the Limitation Regulation.

That Art. 8 does not apply, as the rights of the Tarawad which the Karanaven represented in the proceedings under Sec. 230 old C.P.C. were unaffected by the sale. That the act of the Karanaven, in the absence of fraud or collusion, is the act of the whole Tarawad ; and (following A. S. No. 18 of 1062 published at 4. T. L. R., 42) that a judgment or decree passed in a suit brought by or

LIMITATION.—(*Continued*).

against a Karanaven, binds all his Seshakars and operates as *res-judicata.*

And that an order under Sec. 230. C. P. C. has the same force of *res-judicata* as a decree in a regular suit. *Easwari* vs. *Junis Sett.* 9. T. L. R., 78.

4.—*By claimant to eject purchaser at court-sale—Burden of proof as to superior title, as against person in possession.*

A suit by a claimant to immovable property attached in execution of a decree, to eject the purchaser at the court-sale, is not time-barred, if brought within one year of the date of the dismissal of the claim-petition.

In suits for ejectment, the defendant, if in possession, is entitled to call upon the plaintiff to prove superior title, as against him (defendant). *Makoji* vs. *Abasali.*

10. T. L. R., 40

ART. 8.

1.—*Cancelment of sale had in execution of decree—Decree against Manager of Malabar Tarawad. Res-judicata.*

Where a plaintiff sues to obtain a declaration cancelling a sale had in execution of decree, to which his Tarawad was neither expressly nor constructively a party, and the property was put up for sale as the property of a stranger, while it really belonged to the plaintiff's Tarawad, the period of limitation applicable to the case is 12 years.

A decree obtained against a mere manager of Malabar Tarawad, who had not the full rights, and privileges attaching to the position of a Karanaven and who is shown to have acted in breach of his duty, in a suit to which the Karanaven was not a formal party and had no opportunity of proving the claim of his Tarawad, cannot operate as *res-judicata* against a subsequent suit, based on the same claim and instituted by representatives of that Tarawad. *Pothen* vs. *Parameswaran.* 8. T. L. R., 33.

2.—*Suit to set aside court-sale of Makkatayam property belonging to Marumakkatayam sub-Tarawad.*

Held that a suit brought by the other members of a Marumakkatayam sub-Tarawad to set aside a court-sale of its Makkatayam property in execution of a decree against the Karanaven of the sub-Tarawad, would be barred if not brought within one year from the date of the confirmation of the sale. *Kalliani* vs. *Lekshmi.* 11. T. L. R., 139.

LIMITATION.—(*Continued*).

3.—*Suit to set aside court-sale held in execution of decree against junior members.*

By force of Section 15 of Regulation V of 1068, amending Art. 8 of the Schedule appended to Regulation II of 1062, the said article governs also suits to set aside sales of Tarawad property made in execution of decree passed against a junior member. No member of a Judgment-debtor's Tarawad, whether the debtor be the Karanaven, or only a junior member, can seek to set aside a court-sale of Tarawad property, *on any ground whatever,* unless he brings his suit within one year from the date of confirmation of the sale. *Ichira* vs. *Kunchu.* 12. T. L. R., 122.

Art. 10.

1.—*Cancelment of Pattah issued by Settlement Department—Boundary Regulation* (*III of* 1058.)

To bring a case within the provisions of Regulation III of 1058, there must be some dispute regarding a boundary between properties claimed under adverse titles. It is only in cases where the Settlement Department incidentally decides questions of title in connection with disputed boundaries, that the period of 2 months provided for an appeal to the civil courts, is applicable. Where there is no dispute about boundaries, but the question is concerning the registration of a holding, the limitation applicable is that prescribed by Art. 10 of the Limitation Regulation, *viz.,* one year. *Mathevan* vs. *Krishnar.* 8. T. L. R., 78.

2.—*Suit to cancel Pattah—Sirkar not a party—Effect of.*

Held that the limitation of one year does not apply to suits for cancelment of revenue proceedings by persons who were no parties, directly or indirectly to such proceedings. *Salia Sherif Sahib* vs. *Mahomed Hussan Sahib.* 12. T. L. R., 113.

3.—*Sirkar Waste Land (Puthuval)—Suit for declaration relating to, and cancelment of registry of. Saving of limitation bar in case of plaint returned for presentation to the proper court.*

Held by a FULL BENCH that suits for declaration of title to immovable property and for setting aside orders of Revenue authorities refusing to recognize plaintiff's title and directing registration of the land as Government waste, are governed by Art. 10 of the Limitation Regulation and should, therefore, be brought within one year and not 12 years from the date of the order sought to be cancelled. *Held* by a Division Bench that the plaint in the case having been returned by one court for presentation to the

proper court, the period of limitation cannot be extended by the plaintiff's thereafter presenting fresh petitions to the Revenue authorities. *Padmanaben* vs. *Dewan of Travancore.* 11. T. L. R., 70.

4.—*Suit for declaration of Jenmon right and recovery of property wrongly sold by Sirkar.*

Certain property which plaintiffs claim as their Jenmon was sold and delivered by the Sirkar to 2nd defendant as forming part of a certain Kuthakappattom land, plaintiffs sue for a declaration of their Jenmon right over the property and for its recovery. The defendants (including the Sirkar) oppose the suit *inter alia* as time barred under Art. 10 of the Limitation Regulation.

Held that the sale and delivery in question were not held pursuant to any law, and, therefore, Art. 10 of the Limitation Regulation could not govern the case; and that the suit really falls under Articles 119 and 121 of that Regulation. *Sankunni Kurup* vs. *Damodaran Namburipad.* 12. T. L. R., 5.

5.—*Adjournment of Court—Suit to recover value of planks confiscated by the Sirkar and to obtain refund of seigniorage paid on that account.*

Held that suits of this description are governed by Clause 2 of Sec. II of Regulation III. of 1040, which allows a period of one year from the date of the cause of action; that in calculating the period of limitation, the time during which the courts are closed for vacation should be excluded and that, in the circumstances of the case, the planks were liable to seigniorage, the timber having been brought down the Attuvali (the meaning of the term "Attuvali" considered). *Rengaswamy Moodaliar* vs. *Sirkar.*

5. T. L. R., 85.

6.—*Suit to set aside Revenue order—constructive party—Burden of proof—Proclamation on the spot.*

In a suit for cancelment of a revenue Registry.

Held by a FULL BENCH (i) affirming the ruling in A. S. No. 208 of 1068 reported at XI. T. L. R., p. 70, that Art. No. 10 of the schedule appended to the Limitation Regulation applies to all cases in which the right and jurisdiction of the executive to deal with a certain land is disputed. The mere fact that one of the parties to the Revenue Proceedings denied such right and jurisdiction of the Government, will not *per se* take the order passed in such proceedings out of the purview of the said article.

(ii) That Art. No. 10 does not affect those who are not parties to the order of the executive impeached by the suit.

LIMITATION.—(*Continued*).

(iii) That the party who pleads the limitation of one year prescribed by Art. No. 10, must prove affirmatively that his adversary was a constructive party to the proceedings which terminated in the order under suit.

(iv) That a person can be taken to be a constructive party to the order only if a special notice had been served on him requiring him to state his objections, if any, to the order intended to be passed. The mere advertisement in the *Gazette*, generally inviting claimants to put forward their claims, or a proclamation on the spot by beat of tom tom or otherwise, is insufficient to hold that a person who impeaches the order was constructively a party thereto. *Diwan of Travancore* vs. *Krishnan Empran.*
12. T. L. R., 118.

ART. 18. *Suit for damages consequent on wrongful attachment, before judgment.*

A suit for damages consequent on a wrongful attachment and seizure of property, before judgment, is subject to the limitation of one year under Art. 18 of the Limitation Regulation. *Savariar* vs. *Vachi.* 9. T. L. R., 135.

ART. 23. *Suit for restitution of conjugal rights.*

Held that the period of limitation applicable to suits for restitution of conjugal rights, is 2 years from the date on which the restitution is demanded and refused. *Abdul Kadir* vs. *Pathummal.*
11. T. L. R., 163.

ART. 36.—*Cause of action—Tree sold as timber.*

Suit to recover an *Anjili* tree sold as timber or the amount advanced on account of its sale.

Held that a tree sold as timber must be treated as movable property; and, therefore, the limitation applicable to the case is 3 years under Art. 36 of the Regulation.

Held also that as no express period was fixed for delivery of the timber, the cause of action should be taken as arising only after the lapse of a reasonable time. *Alwancheri Tambirakal* vs. *Sankaran.* 9. T. L. R., 143.

ART. 37 AND SECS. 19 AND 20.—*Suit for value of goods sold—acknowledgment—payment—contract.* The suit being for value of goods sold.

Held that the suit is governed by Art. 37. Art. 49 is applicable only where there is a written settlement of accounts signed by

defendant (or his representative). That an oral promise to pay the amount found due on examination of accounts does not amount to an acknowledgment under Sec. 19 of the Limitation Regulation and that it is not a fresh contract there being no consideration for the promise. That payments made by the defendant, but not evidenced by writing signed by him will not extend the period of limitation under Sec. 20.

That in the absence of such acknowledgment or payment, all items of the plaintiff's account as are more than 3 years old at the date of the suit are barred by limitation and that the plaintiff may apply unappropriated payments towards the barred items. 10. T. L. R., App. 3.

ART. 60.

Chitti agreement executed by prized subscriber to pay future instalments—cause of action.

Suit for recovery *inter alia* of subscriptions due by a prized subscriber of a chitti—the late Karanaven of the defendant. On the evidence it is found that the defendant's Karanaven had executed an agreement which provided that the subscriptions due at the subsequent drawings should be paid according to the Chitty rules (*i.e.*, annually), interest amounting to one-fourth of the principal due being payable in addition, in case of default of payment of any instalment, at the next drawing, and the whole balance with interest equal to one-half of the principal, at the third drawing The agreement was executed in 1060 and the suit filed in 1064. The Munsiff and the Zillah Judge held the suit barred with respect to the claim aforesaid, on the ground that more than 8 years had elapsed from the date of the agreement.

Held that the agreement of 1060 is equivalent to a bond falling under Art. 60 of the schedule attached to the Limitation Regulation: that under the said article no demand in writing having been made by the plaintiff, the period of limitation should be calculated from the expiration of the term of payment as to the part then payable, and for the other parts, from the expiration of the respective terms of payment. And that, therefore, the claim for the subscriptions due for the years 1061, 1062 and 1063 is not barred. *Govindan* vs. *Kesavan.* 10. T. L. R., 49.

ARTS. 65 AND 98. *Bond—Effect of setting—off Michavaram of debtor's land in creditor's possession towards interest.*

LIMITATION.—(*Continued*).

In a suit based on a bond which stipulated for appropriation by the creditor of a portion of the Michavaram payable by him on certain land he held on sub-mortgage from the debtor's kanam lessee, towards the interest payable by the debtor, and under which it was understood that the debt was to become payable on the termination of the creditor's sub-mortgage.

Held that Art. 98 does not govern the case, but that the proper article applicable to the suit is number 65 (which prescribes a period of 3 years for a suit on a bill of exchange, promissory note or bond not expressly provided for, calculated from the time that the bill, note, or bond becomes payable), the cause of action in the case being taken to have accrued from the date of the termination of the sub-mortgage. *Kandar* vs. *Sankara Varier*. 12. T. L. R., 37.

ART. 70. ——*Section 6 of the old Limitation Regulation—Interpretation of—*

For a case to fall under Section 6 of the old Limitation Regulation.

(1) The suit must be for balance of accounts current.

(2) The persons must be merchants and traders.

(3) They must have had mutual dealings, and (4) the last item in the account admitted or proved must be one indicating the continuance of mutual dealings. *Krishnan* vs. *Govindan*. 9. T. L. R., 5.

ARTS. 75 *and* 100.—*Damages sustained by client—Negligence of Vakil to execute a decree.*

Held that the limitation for an action against a Vakil for damages by a client under the old Limitation Regulation is 6 years and that the prescribed period of limitation runs from the date on which the decree which the Vakil undertook to execute, became barred by his negligence. *Ramanadha Row* vs. *Dharmaraja Aiyan*. 8. T. L. R., 89.

ART. 78—*Matrimonial suit.*

Held inter alia that Art. 78 of the Limitation Regulation is governed by Section 18 of the Regulation and the plaintiff should show that he was, by means of fraud, kept from learning of the deception practised on him. *Poonen* vs. *Maria*. 10. T. L. R., 95.

ART. 79—*Inapplicability of, to suits for recovery of Chitti money.*

Held that Art. 79 does not apply to suits for recovery of Chitti money remaining in the hands of the conductor.

Held also that suits by Chitti subscribers must be brought within 3 years of the date of failure to subscribe by the plaintiff or within 3 years of the closing of the Chitti. *Munden* vs. *Mahomed.* 11. T. L. R., 158.

ART. 90—*House-rent.*

Held that suits for rents of buildings are governed by Clause 5, Section 2 of Regulation III of 1040 and the limitation is 3 years from the time the cause of action arose. *Uluthiran* vs. *Narayana Aiyan.* 1. T. L. R., 51.

ARTS. 91 AND 109.

Vendor and Vendee—Purchase-money—Suit for recovery of.

In a suit for recovery of purchase-money in the hands of the vendee:

Held that the suit is governed by Art. 91 and not Art. 109 of the Schedule appended to the Limitation Regulation, and, is therefore subject to 3 years' limitation from the date of the sale to the vendee. *Pyli* vs. *Eippora.* 12. T. L. R., 15.

ART. 95.

Limitation—Chitti—Cause of Action.

1.—In the absence of an express stipulation to the contrary, a defaulting subscriber's right to recover back his contribution from the foreman, arises on the expiry of the time stipulated for the completion of the Chitti, in case the scheme continues in spite of the default of the subscriber, but where the scheme falls through the default of the foreman himself, the subscriber acquires a right to claim back his contribution at once; and the suit to recover the contributions to a Chitti by a subscriber more than 3 years after the date of the default on the part of the foreman is clearly barred. *Kochupillai* vs. *Neelacandan.* 6. T. L. R., 98.

2.—Chitti scheme. The Limitation Regulation does not run against a Chitti Manager who waives his right to enforce a penal clause in a Chitti scheme, whereby on failure of payment of an instalment, the defaulting member was declared liable to make good the whole amount. *Krishna Iyen* vs. *Parameswaran.* 2. T. L. R., 29.

3.—*Compensation for land assumed by Sirkar. Limitation.*

Suit against the Sirkar for compensation for land assumed for public purposes is governed not by Art. 10 but by Art. 95 and

LIMITATION.—(*Continued*).

will therefore be barred only if brought after 3 years from the date of the assumption of the land. *Sirkar* vs. *Gopalan*. 10. T. L. R., 32.

4.—*Bond for paddy payable on demand.*

Held that the case must be taken as an action brought for compensation for breach of contract not specially provided for and is governed by Art. 95 and that the prescribed period of 3 years runs from the date of the breach, *i.e.*, from the date of demand. *Subramanian* vs. *Alanganperumal.* 10. T. L. R., 89.

5.—*Suit by vendor for recovery of purchase-money—Limitation.*

Held that the period of limitation applicable to a suit by a vendor, for recovery of purchase-money from the purchaser, is 3 years computed from the date of the sale (Art. 95 of the Limitation Regulation.) *Parvati* vs. *Anantan.* 12. T. L. R., 67.

Arts. 96 and 109.

1.—*Suit for damages.*

Held that a claim for damages preferred within 6 years of the accrual of the cause of action is not barred, it not being for pecuniary penalties or for forfeiture of breach of any law or regulation. *Lakshmi* vs. *Nagam Aiyah.* 10. T. L. R., 178.

2.—*Suit for arrears of rent—Registered lease—Limitation Regulation, Arts. 96 and 109—Limitation where rent is made a charge on the land.*

Claims for rent due under registered leases are governed by 6 years' limitation under Art. 96 of the Schedule appended to the Limitation Regulation, and where the rent is expressly made a charge on the lease-hold under the terms of the deed of lease, Art. 109 which prescribes a period of 12 years will apply. *Krishnan* vs. *Venkateswera Iyen.* 12. T. L. R., 143.

3.—*Suit for recovery of advance paid by an intending purchaser of immovable property.*

Held that a suit for recovery of the amount advanced on an agreement to convey immovable property to an intending purchaser is really an action for damages for breach of contract in writing and registered, and, therefore, falls under Art. 96 which prescribes a period of 6 years from the date of such breach. *Iswaran* vs. *Meeran.* 12. T. L. R., 177.

Art. 97. 1—*Limitation—Memo. of objection.*

Held that Section 11 of the Court Fee's Regulation applies only to objections taken to the portion of decree not appealed against.

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Held also that the limitation for suits brought to recover money lent under a written agreement unregistered, that it shall be paid on demand, is 6 years under Art. 97 of the Limitation Regulation II. of 1062. *Krishna Rao* vs. *Kavari Bai.* 7. T. L. R., 83.

2.—*Bond payable on demand. Art. 97 of the Limitation Regulation—Applicability of when part consideration is old debt.*

Held by a FULL BENCH (Sitaramaier, J., dissenting) that the limitation applicable to a suit to recover money due under a document which provides for payment on demand, is 6 years under Art. 97 of the Limitation Regulation ; and that it makes no difference that part of the consideration recited in the document consists of old debt. 9. T. L. R., App. 23.

ART. 98. *Bond—Effect of setting off Michavaram of debtor's land on creditor's possession, towards interest.*

See Art. 65 above. *Kander* vs. *Sankara Varier.* 12. T. L. R., 37.

ART. 100—*Suit by guardian for recovery of money expended on ward's behalf—cause of Action—Art.* 100 *of the Limitation Regulation.*

(1) Suit for re-imbursement of money expended by a guardian on behalf of a minor who was under his guardianship.

Held that the plaintiff's cause of action accrued from the date of the termination of the guardianship; and that the suit is governed by Art. 100 of the Schedule appended to the Limitation Regulation, where-under the period for enforcing the claim is 6 years. *Vasudevan Bhattatiri* vs. *Narayanan.* 11. T. L. R., 173.

(2) *Suit for recovery of damages—Limitation.*

Held that a claim (for damages) preferred within 6 years of the accrual of the cause of action is not barred, it not being for pecuniary penalties or for forfeiture for the breach of any law or regulation. *Lakshmi* vs. *Nagam Aiyah.* 10. T. L. R., 178.

3.—*Recovery of money deposited as security for proper discharge of duties as public servant—cause of action—Sirkar.*

In 1058, a charge of embezzlement was made against plaintiff's deceased father who, as a cash-keeper, had deposited with the Sirkar certain amount for proper discharge of his duties, and he was thereon convicted and dismissed from service. The plaintiff thereafter sued the Sirkar and obtained an *ex parte* decree in 1063 releasing certain movables attached by the Sirkar in satisfac-

tion of their claim against plaintiff's father, and now sues for recovery of the deposit amount.

Held that the cause of action in the case must be taken to have accrued from the time when the account of charges due against the deposit was made and delivered to the depositor; that, in the present case, the criminal prosecution of the depositor was tantamount to the preparation and delivery of such account; that the subsequent *ex parte* decree obtained by plaintiff does not give a fresh starting point; and that the suit, having been brought 6 years after the date of the criminal prosecution, is barred. *Sirkar* vs. *Mathevan.* 12. T. L. R., 116.

Art. 100—*Old Limitation Regulation, Clauses 2 and 10—Damages—Limitation—Movable and immovable property—Wall.*

A, B, and C cause injury to the compound wall of D, E, and F. The former sue the latter for recovery of damages, and the latter plead bar by lapse of time, the suit being instituted after the expiration of one year from the date of the destruction of the wall.

Held that if the injury caused is to movable property, the claim is rightly held barred as only one year's limitation applies to such cases (Clause 2, Sec. 2 of the old Limitation Regulation); but, if otherwise, *i.e.*, the injury is caused to immovable property, the claim cannot be barred inasmuch as it is preferred within 6 years from the date of the commission of the tortious act (Clause 10 of the old Regulation).

Held also that a wall is immovable property since it cannot change its position without changing its name and shape, *i.e.*, without actual demolition, and the period of limitation for suits of this nature is 6 years from the date of the cause of action. *Varki* vs. *Pathrose Kathanar.* 6. T. L. R., 126.

Art. 101—*Limitation*—

Held that enjoyment of property is tantamount to receiving maintenance from the estate, and that where there is such enjoyment, limitation prescribed in Clause 8 of Section 2 of the Limitation Regulation begins to run only from the date on which it ceases. *Asiya* vs. *Ahammathu.* 5. T. L. R., 14.

Arts. 101 and 105.

Suit for share in ancestral property by Mahomedans. *Held* that the words "joint family property" used in Art. 105 of the Schedule appended to the Limitation Regulation cannot point to

JURISDICTION.—(*Continued*).

property owned by Mahomedans claiming descent from a common ancestor or ancestors and undivided among themselves.

That Art. 101 (last clause) governs the case unless it is clearly proved that plaintiffs continued in joint possession of all the plaint property with the other sharers and residuaries or at least some of them. And that such joint possession not having been proved, the suit brought after 12 years from the date on which plaintiff's right to claim the shares accrued, is barred under Art. 101 of the Limitation Regulation. *Kunjummal* vs. *Kochukunju.*

11. T. L. R., 125.

ART. 104.

1.—*Cancelment of alienation by Karnaven.*

The period of limitation applicable to a suit by Seshakars to obtain a declaration as to the invalidity of an alienation of immovable property belonging to the Tarawad by their Karnaven is 12 and not 6 years. A. S. 73 of 1063—distinguished. *Kaliamma Pillai* vs. *Marthandan.* 9. T. L. R., 96.

2.—*Cancelment of alienation by Karnaven of Marumakkathayam Tarawad. Ignorance of Registration of documents.*

A suit to set aside an alienation made by a Karnaven under a registered document, must be instituted within 12 years from the date of the registration of the document evidencing the transaction. (Art. 104 of the Limitation Regulation.)

Ignorance of the fact of registration of the document is not a sufficient excuse for the failure to sue in time. *Padmanabhan* vs. *Ariyappan.* 9. T. L. R., 181.

ART. 109.

1.—*Mortgage loan—Want of possession—Limitation.*

A mortgagee who has not been put in undisputed possession under the mortgage has a right to sue for the money within 12 years from the date of the mortgage. *Nalappan* vs. *Abdul Kadir Pillai.* 1. T. L. R., 74.

2.—*Scope of. Interest on arrears of Michavaram.*

Held that Art. 109 of the Schedule appended to the Limitation Regulation applies not only to Michavarams due under Kanappattam leases but also to all dues payable to the proclamation Jenmis, so long as they form a charge on Jenmom lands.

Held also that interest on arrears of Michavaram is awardable. *Minchara Swamiyar* vs. *Narayanan,* 9. T. L. R., 204.

LIMITATION.—(*Continued*).

3.—*Hypothecation bond.*

A brings a suit against B on a hypothecation bond executed by B bearing date the 15th Meenum 1048, the bond providing for payment of interest on the principal amount annually, with liberty to A to enter on possession of the hypotheca in case B defaults to pay interest, as agreed. B having defaulted to pay interest as stipulated for. A prays for the possession of the property hypothecated or for a decree for the principal and interest. B, while admitting the mortgage, pleads want of consideration and bar by limitation.

Held that the fact that A has been left in possession of the bond with the title-deeds of the hypothecated property for over 12 years, is a strong circumstance against B's plea. *Varki* vs. *Kyparee.* 7. T. L. R., 29.

4.—*Cause of action. Conversion of hypothecation into mortgage—Recovery of money or possession of property.*

In a suit to recover money due under a hypothecation deed which conferred on the creditor the right to enter upon, and take possession of the hypotheca on the debtor's defaulting to pay interest at stipulated periods or to recover possession of property on the ground that defendant has defaulted to pay interest subsequent to 1063.

Held that the plaintiff's claim for money is barred, as no term for repayment is fixed in the bond, and 12 years have elapsed from the date thereof. And that the claim for possession of the property is not barred, as the cause of action therefor accrued only in 1064, when default was committed in the payment of interest. *Mariady* vs. *Renga Rao.* 10. T. L. R., 147.

5.—*Hypothecation—Interest charged on immovable property.*

Held that where interest claimed is a charge on immovable property, the period of limitation for recovery of same is 12 years. *Asanisa* vs. *Nainan Tampi.* 10. T. L. R., 198.

6.—*Mortgage—Personal remedy against Mortgagor. Limitation—Limitation Regulation II of* 1062—*Art.* 109 *and Sec.* 20, *Clause* 1. *Extension of limitation by mortgagee's possession.*

Held that under Art. 109 of the Limitation Regulation a mortgagee's remedy against the debtor personally extends to 12 years from the date the debt sued on was payable and is not restricted to 6 years.

Held also that where a holder of a mortgage was in possession of the land mortgaged, the period of limitation may, by the pro-

visions of Section 20 of the Limitation Regulation, be computed from the date such possession terminated. *Aiyappen* vs. *Kartiayani.* 11. T. L. R., 74.

7.—*Suit for recovery of purchase money from vendee—Limitation.* "*Vide Art.* 91 above."
Pyli vs. *Eipporah.* 12. T. L. R., 15.

8.—*Suit for arrears of rent under registered lease.* "*Vide Art.* 96 above."
Krishnan vs. *Venkateswera Iyen.* 12. T. L. R., 143.

9.—*Chitty conductor—assignment of security—recovery under—supercession of valid by invalid title—Estoppel—Res-Judicata. Limitation Regulation Art.* 109.

Plaintiff the foreman of a Chitti scheme to which 2nd defendant a junior member of his Tarawad, the 1st defendant being the Karnaven thereof, was a subscriber, obtained an hypothecation of the Tarawad properties on 2nd defendant's drawing his prize amount, for the due payment of future instalments.

Subsequently plaintiff assigned his rights under the hypothecation to a 3rd party who sued for the recovery of the subscriptions which 2nd defendant had allowed to fall into arrears. That suit having been dismissed in appeal by the High Court, on the ground of want of consideration for the hypothecation, the present suit is brought by the plaintiff to recover the money due to him under the deed of hypothecation as a charge upon immovable property covered thereby. Defence is amongst other pleas that the plaintiff is barred by the statute of limitation.

Held that the plaintiff's claim is governed by Art. 109 of the Limitation Regulation which prescribes a period of 12 years for suits to recover money due under a hypothecation of immovable property. *Marthandan* vs. *Mathevan.* 12. T. L. R., 151.

Art. 111.—*Sale by mortgage—Suit for redemption by mortgagor—Limitation—Plea of adverse possession by purchaser from mortgagee—Interpretation of the article.*

Held that the words "without notice of trust actual or constructive" in Art. 111 of the schedule appended to the Limitation Regulation apply also to mortgages.

That a purchaser of mortgaged property from the mortgagee claiming the protection of the above Article, in a suit for redemption by the mortgagor, cannot succeed, unless he shows that he is a *bona fide* purchaser, that he has purchased for valuable consideration and that he purchased without notice actual or constructive of the mortgage. *Chinna* vs. *Ramanathen.* 11. T. L. R., 204.

JURISDICTION.—(*Concluded*).

ART. 117—" *Vide* Art. 121."

ARTS. 119 and 121—*Suit for declaration of Jenmom right and recovery of property wrongly sold by Sirkar.* " Vide Limitation Art. 10 above." *Sankunni Kurup* vs. *Damodaran Namburipaud.*

12. L. T. R., 5.

ARTS. 121 and 124.

Kanam—Acknowledgment of title—Renewal of Kanam—The weight of authorities is in favour of the view that an acknowledgment of title of the mortgagor, in order to fall within Clause 9 of Sec. 2 of the old Limitation Regulation should be one made within 50 years of the mortgage and this without reference to the question whether the acknowledgment was made before or after that Regulation came into force.

A contract to renew a Kanam is in itself a transaction creating an interest in immovable property and the period of limitation for specific performance of such contracts is 12 years under Clause 7, Sec. 2 of the old Limitation Regulation (See also Kanam). *Raman Nanburipaud* vs. *Mathaven Namburi.* 2. T. L. R., 49.

ART. 121.

1.—*Transfer of territory.*

A sues B to recover a certain property which the Cochin Sirkar is said to have taken forcible possession of in 1007, but which, in Adi 1057, again became Travancore territory when the boundary dispute between Travancore and Cochin was settled by arbitration. To get over the plea of bar raised by B, A states that so long as the territory, including the plaint land, was subject to Cochin, he was unable to sue in the Travancore Courts.

Held that if the land was Cochin territory for about half a century prior to the arbitration settlement of 1057, and A's suit was barred at that date as regards any remedy in Cochin, the transfer of territory will not give A a fresh starting point in Travancore. *Ouseph* vs. *Narayanen.* 9. T. L. R., 1.

2.—*Puthuval—Cancellation of Registry by Government—Proceedings in the Revenue Department.*

The property was given to Pylo, the defendant's vendor, in 1023 on a simple lease. In 1031, Pylo represented to Government that the property in suit was *Puthuval* and got it registered in his name. Neither he nor his successor in estate ever paid rent to the plaintiff. In 1065, the Government cancelled the registry in

LIMITATION.—(*Continued*).

Pylo's name and referred the plaintiff to a civil action for recovery of possession. This suit was instituted in 1066.

Held that Pylo forfeited his tenure as lessee in 1031 by denying the title of plaintiff's Tarawad and that his possession and that of the defendant thereafter became adverse to the plaintiff, and that the suit was barred by limitation. *Mathaven Numburi* vs. *Lonappen.* 9. T. L. R., 54.

3.—*Adverse possession. Absence of proof of title. Attachment and sale of property. Trespass.*

A person who has been in adverse possession (for a period of 12 years) is entitled to a decree in his favour as against a trespasser even without proof of title. *Chakko* vs. *Ittunnan.* 9. T. L. R., 35.

4.—*Adverse possession as against vendee.*

Where neither the vendor nor vendee had had possession of the property conveyed, for 12 years preceding the date of suit by vendee to recover the property, the claim is barred by adverse possession. *Ponkathan* vs. *Narayanaperumaul.* 9. T. L. R., 179.

5.—*Tenant's denial of Landlord's right.—Adverse possession. Vide* "landlord and tenant."

Where a tenant asserts an adverse right against his landlord in respect of his tenure and holds the land under such right to the knowledge of the landlord for over 12 years, the landlord is barred from disputing the right asserted by the tenant.

Semble. A Kanam lease granted by a non-Jenmi is redeemable at any time after 12 years from the date of the lease and within 50 years from the expiration of that period, *i.e.*, (the 12 years). *Kerala Vurman Tirumulpaud* vs. *Krishnan.* 10. T. L. R., 42.

6.—*Easement—Right on one's property—Proof—Purchaser's right to interfere with other's property. Injury to immovable property—Limitation.*

Suit for a declaration of plaintiff's right *inter alia* to have a window re-opened. It was found that part of the window was situated upon plaintiff's portion of the house-site. The lower courts dismissed the claim altogether on grounds applicable to easements.

Held that the obstruction of plaintiff's part of the window being an injury to immovable property, and the suit having been brought within 12 years of the obstruction, no question of limitation arises in regard to this part of plaintiff's claim. *Ganapati Iyen* vs. *Venkatanarayana Iyen.* 10. T. L. R., 56.

LIMITATION.—(*Concluded*).

7.—*Suit for declaration of Jenmom right and recovery of property wrongly sold by Sirkar.*

See "Art. 10". above. *Sankunikurup* vs. *Dhamodharan Namburipaud.* 12. T. L. R., 5.

8.—*Chose in Action.—Saleability of. Adverse possession as against vendee. Limitation.*

A sale of property which may become the subject of litigation, cannot be held invalid on that account, such property being a fit subject for contract.

Where neither the vendor nor vendee had had possession of the property conveyed, for 12 years preceding the date of suit by vendee to recover the property, the claim is barred by adverse possession. *Ponkathan* vs. *Narayanaperumaul.* 9. T. L. R., 179.

9.—*Sale by Karanaven of Tarawad property cancelled by court. Suit to recover possession of same. Limitation Arts.* 117 *and* 121.

Held by a Division Bench that the cause of action in a suit to recover possession of property wrongfully alienated by a Karnaven, but which alienation was set aside by a court at the suit of junior members, must be treated to have accrued on the date of the sale, and not from the date of the decree cancelling it. The article applicable to such a suit is No. 121 and not 117. The defendants in the case, the alienees, having been in adverse possession for above 12 years from the date of the sale, the suit for recovery of possession is barred. *Manni* vs. *Neelacundan.*

12. T. L. R., 211.

10.—*Suit by junior member to recover possession under decree cancelling alienation by Karnaven.*

"*Vide* Malabar law." *Manni* vs. *Neelacundan.*

12. T. L. R., 211.

ART. 123.

——*Recovery of stamp duty and penalty by mortgagee.*

Held that a mortgagee is entitled to recover from the mortgagor the stamp duty and penalty levied from him on the title-deeds delivered to him by the mortgagor.

Held further that the mortgagee's claim to the refund of the money would not be barred by lapse of 3 years from the date of payment, but that he may wait for recovery of the amount till the redemption of the mortgage is sought for and the delivery back of the title-deeds is compelled—*i.e.*, he may recover the money with the mortgage-debt. *Kesavan* vs. *Sankaran.* 11. T. L. R., 181.

LIMITATION.—(*Continued*).

ART. 124.

1.—*Otti and Kulikkanam mortgages, cause of action.*

Held that in cases of Otti and Kulikkanam mortgages, the cause of action arises only 12 years after the date of mortgage and the period of limitation (50) years must be calculated from that time. *Kochu* vs. *Anantan.* I. T. L. R., 52.

2.—*Redumption of mortgage.* The period of limitation for redemption of a mortgage is 50 years *Raman* vs. *Punnavanom.* 3. T. L. R., 23.

ART. 136.

Exparte Decision—Appeal. The period of limitation prescribed for applications to set aside an *exparte* decision runs from the *date* on which the defendant had notice of the existence of the decree. The mere passing of an order in execution, or the issuing of an execution process which is not likely to give notice to the defendant of the existence of the decree, is not an execution of a process to enforce Judgment. *Korathu* vs. *Kochukunju.*
[illegible] 3. T. L. R., App. 42.

ART. 143.

—— *Application to compel decree-holder to certify payment made out of court.*

Held that no application for compelling decree-holders to certify an adjustment made out of court can be entertained after the expiry of 60 days from the date of the adjustment. *Munan Tambi* vs. *Narayanan Chettiar.* 11. T. L. R., 141.

ART. 147.

——*Application to implead legal representative of deceased Respondent.*

Held that there is no express provision in the Limitation Act applicable to the cases of death of Respondents, nor is there any provision in the Civil Procedure Regulation making it obligatory on the Appellants to make the Respondent's representatives parties to the appeal within any given time; that there is no express provision in the code for limiting to 60 days the period for an application by Appellant to bring in the representatives of a deceased Respondent; and that the proper course, in such cases, would be for the Judge to direct the Appellant to bring on the record the representatives of the Respondent reported to be dead,

LIMITATION.—(*Continued*).

allowing a reasonable time to make the necessary application. *Ananchaperumaul* vs. *Pichu.* 7. T. L. R., 63.

ART. 153.

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION.
2. PERIOD FROM WHICH LIMITATION RUNS :—
   (a) WHERE THERE HAS BEEN CONTINUOUS PROCEEDINGS.
   (b) WHERE PREVIOUS APPLICATION HAS BEEN MADE.
   (c) WHERE THERE HAS BEEN RESISTANCE TO LEGAL PROCEEDINGS.
   (d) WHERE THERE HAS BEEN AN APPLICATION TO SET ASIDE A JUDGMENT EXPARTE.
3. STEP IN AID OF EXECUTION.
4. JOINT DECREES.

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION.

1.—*Registered decree.*

The question as to whether the period of limitation for execution of decrees registered under the provisions of Sec. 27 of the Registration Regulation, is 6 or 3 years, having been referred to the Full Bench, it was held that the six years limitation applied to such cases, under Art. 153 of the Limitation Regulation. *Raman* vs. *Padmanabhen.* 8. T. L. R., App. 12.

2.—*Registered decree—Execution.*

Under the present Limitation Regulation, the time allowed for the execution of a registered decree is 6 years, irrespective of whether the decree is or is not one requiring registration. *Krishnan* vs. *Annaswami Iyen.* 10. T. L. R., 139.

3.—*Application for execution of decree.*

Where the court has ordered a process for execution of a decree, to issue on an application by the decree-holder, the legal presumption is that the decree was not barred at the date of the order as it is always the duty of the courts to ascertain whether execution is barred, before passing such an order. The debtor's silence as to limitation only strengthens this presumption. *Velayudhan* vs. *Kumaran.* 8. T. L. R., App. 55.

2. PERIOD FROM WHICH LIMITATION RUNS.

(a) WHERE THERE HAS BEEN CONTINUOUS PROCEEDINGS.

—*Attachment—Effect of to save limitation in execution, under the old Limitation Regulation.*

Held that an attachment of property made in execution of a decree, continues in force, under the old Limitation Regulation

until it is removed or superseded. It operates *de die in diem* as a process of execution upon the decree, and at any time further process for the sale of the property might be issued upon the attachment. *Upandra Kammathi* vs. *Venu Gopala Prabu.*

11. T. L. R., 13.

(*b*) WHERE PREVIOUS APPLICATION HAS BEEN MADE.

—*Execution of decree. Delay consequent on order of Court. Pending proceedings.*

A obtained in 1057 a decree which was soon after attached in execution of a decree against A. In 1060, A having died in the interval, B, A's representative, applied for execution of the decree obtained by A, whereon the court declined to allow execution until the said attachment was removed. This attachment was removed in 1066, and B applied immediately afterwards for execution of the decree in A's favour. It was contended by defendant that, as no steps were taken to execute the decree between 1060 and 1066, the execution was barred.

Held that the application of 1060 (admittedly made in time) must be considered to have been pending until the date of the removal of the attachment; that no rule of limitation can affect legal proceedings; and that, therefore the claim to execute the decree was not barred. 9. T. L. R., App. 10.

(*c*) WHERE THERE HAS BEEN RESISTANCE TO LEGAL PROCEEDINGS.

1.—*Suit to set aside proceedings in execution.*

Held that the time taken by a decree-holder in resisting a plaintiff who sought to set aside his decree and the proceedings taken thereunder keep the decree alive.

1. T. L. R., 31.

2.—*Section* 16 *of Regulation III of* 1040.

"Proceedings to keep a decree in force" in this section includes "resistance to legal proceedings taken by another person."

2. T. L. R., App. 4.

3.—*Execution of decree—Bona fide and diligent proceedings by decree-holder.*

The time during which a decree-holder was conducting *bona-fide* and with due diligence legal proceedings to remove objections taken to attachment of properties in execution of his decree, could not be reckoned as time running against the decree-holder and

should be excluded in computing the period of limitation prescribed by the Regulation. *Sankaran* vs. *Neelacundan.*

8. T. L. R., App. 49.

4.—*Injunction removing attachment—claim suit as against a moiety of property attached—Effect of, as against the other moiety to save limitation—Effect of attachment.*

A third party preferred a claim to a moiety of certain property the whole of which was under attachment, and obtained an injunction suspending sale of the moiety pending disposal of a suit to be filed by the claimant to establish his claim. The decree-holder was silent during the pendency of such suit and, on its disposal, renewed his application for the sale of the other moiety. This application is opposed as time-barred, three years having elapsed from the date of the last step taken in aid of execution;

Held on the questions raised :—

(i) That the injunction applied only to the moiety which the third party claimed and that, therefore, the period of pendency of the claimant's suit could not be excluded in computing the time allowed by law for execution as against the moiety now sought to be sold.

(ii) That, however, the pendency of the attachment as against the latter moiety of the property saves the decree from being barred as against it. *Thanumalayaperumal* vs. *Kozhalamanka.*

11. T. L. R., 213.

(*d*) WHERE THERE HAS BEEN AN APPLICATION TO SET ASIDE A JUDGMENT EX-PARTE.

——*Held* that in a case in which an application is made by the defendant to set aside an *ex-parte* Judgment passed against him, the plaintiff has 3 years from the date of the disposal of the application, during which he might execute his decree. 1. T. L. R., 35.

3. STEP IN AID OF EXECUTION.

1.—*Rigistered Decree—Execution—Limitation under the old Regulation. Barred Decree—Effect of the new Regulation on. Assignment of Decree.*

The old Limitation Regulation made no distinction between registered and unregistered decrees, and the period fixed by that Regulation for execution of all decrees, was only three years.

A decree, even though registered, if barred at the date the new Regulation came into force, would not be revived by the provisions of that Regulation.

LIMITATION.—(*Continued*).

An assignment of a decree is not such a step in aid of execution as would save the decree from the legal bar. *Ussan Pillai* vs. *Ussan Vava.* 11. T. L. R., 42.

2.—*Decree—Further execution—Limitation—Saving of, by auction-purchase—Confirmation of sale—Effect of, to save limitation.*

Held that proceedings taken by a decree-holder who also became the auction-purchaser in part satisfaction of the decree, to obtain possession of the property purchased, are not steps in aid of execution, and will not keep the decree alive so as to save the right of further execution from becoming time-barred.

Held further that the application for further execution is barred, as it was made 3 years after the date of the sale. Time, in such cases, begins to run from the date of the sale, and not from the date of the confirmation of sale. *Chekvarriathu* vs. *Meera Lebbai.* 11. T. L. R., 105.

3.—*Application for transfer of Execution—whether a step in aid of Execution.*

Where an application for transfer of a decree from one court to another was made within the time prescribed for execution by section 223 of the Civil Procedure Code, but by the time the latter court was moved to execute the decree, which was done a month after the date of the application for transfer, the period allowed for execution had run out, and the lower court disallowed execution of the decree as time-barred:

Held that the application for transfer is a step in aid of execution; that that application, the transfer and the application for execution made after the transfer must be considered as parts of one transaction; and that, therefore, the execution of the decree is not barred. *Narayanan Tambi* vs. *Neelacandan.* 11. T. L. R., 183.

4.—*Registered decree—Application for issue of notice—Whether a step in aid of execution—Rejection of application on the ground of non-receipt of records—subsequent application within* 6 *years—Limitation—Limitation Regulation, Article* 153. *Effect of the amended Regulation V of* 1068.

Where an application for issue of notice to the debtor under a registered decree of 1061, made on 10th Thye 1064, was rejected as the records had not been received in the court executing the decree, and the next application for execution was made on 10th Thye 1070:

Held that every decree registered by means of a memo. has, under the Limitation Regulation, as amended by Regulation V of

LIMITATION.—(*Concluded*).

1068, 6 years' time for its execution, from the dates specified under column 3 of the Article No. 153 of the schedule appended to the said Regulation.

That an application for issue of notice to a decree debtor is a step in aid of execution.

That the rejection of the application of 1064 was not on a ground affecting its merits and would not, therefore, debar further application for execution.

And that the application of 1070 being made within 6 years of the last step in furtherance of execution, is not time-barred. *Akka* vs. *Narayanar*. 12. T. L. R., 19.

5.—*Execution—Limitation—Application to bring in representative of deceased decree-debtor—Whether a step in aid of execution.*

An application by a decree-holder to make the legal representative of a deceased judgment-debtor a party to the execution proceedings, is a step in aid of execution, and will give a fresh starting point for the computation of limitation in execution. *Ismal Lebbai* vs. *Amina Ummal*. 12. T. L. R., 36.

4. JOINT-DECREES.

—The execution of a decree by one of several decree-holders is sufficient to save the decree from bar by limitation in favour of the other decree-holders; and a *bona-fide* proceeding by one of the decree-holders of a joint-decree enures to the benefit of the other decree holders. *Ramanatha Rao* vs. *Assam*. 6. T. L. R., 81.

LIMITATION UNDER ABKARY REGULATION.

—Suit for damages consequent on wrongful seizure of articles under Abkary Regulation. *Vide* "Abkary Regulation." *Kochukunju* vs. *Sirkar*. 12. T. L. R., 95.

LIS-PENDENS.

1. Plaintiff purchased property in execution of a decree against the defendants 5 to 7. The defendants 1 and 2, the Jenmis, had brought a suit for redemption against defendants 5 to 7, the mortgagees and recovered possession; and it was during the pendency of this suit that the plaintiff made the purchase.

Held that the doctrine of *lis-pendens* clearly applied and that the plaintiff was bound by the decree in the redemption suit and that the question whether or not the plaintiff had notice, was immaterial. *Arumukam* vs. *Visvasam*. 1. T. L. R., 56.

LIS-PENDENS.—(*Continued*).

2.—*Equitable Lien.*

B contracted to execute an otti and kulikkanom mortgage to A. A sued on the contract and obtained judgment. The conveyance deed was actually executed by the Zillah Judge and the consideration money paid. Previously to the execution of the conveyance, and while the before-mentioned suit was pending, B executed an otti and kulikkanom mortgage to C, and put him in possession. Held that C's mortgage must be treated as subsequent to A's. *Ramaswami Iyen* vs. *Narayanar.* 2. T. L. R., 28.

3.—*Held* that the doctrine of *lis-pendens* has reference only to the property in litigation and not to any question relating to the *status* of the parties thereto in their family or to the competency or otherwise of any of them to do any particular act in connection with the properties of that family. *Govindan* vs. *Govindan.*

10. T. L. R., 190.

4.—*Auction purchase of (Marumakkatayam Tarawad) property not actually in suit—pendency of suit with respect to other property of the family. Effect of, on purchase.*

During the pendency of a suit to set aside an auction-sale of property belonging to a Marumakkatayam Tarawad, held in execution of a decree against its Karanaven, the plaint property was purchased by a stranger in further execution of the same decree. The question having arisen whether the pendency of the suit vitiated the sale:

Held that the doctrine of *lis-pendens* does not apply to property which did not form part of the subject-matter of the suit during the pendency of which the purchase was made. The law does not require intending purchasers to ascertain whether the property they propose to purchase is likely to come within the *ratio decidendi* of a judgment that has yet to be delivered in a litigation to which they are not parties. *Narayanan Potti* vs. *Krishnan.*

11. T. L. R., 144.

5.—*Purchaser of Kanom rights during pendency of suit by Jenmi—purchaser's claim to be indemnified for satisfying the decree—Section* 69 *of the Indian Contract Act.*

Where a purchaser of a Kanomdar's rights during pendency of a suit by the Jenmi for recovery of arrears of Michavarom, discharged the decree passed therein and sued his vendor (the Kanomdar) to be indemnified for the amount he (the purchaser) paid under the decree for protection of his title under the purchase.

LIS-PENDENS.—(*Concluded*).

Held that Section 69 of the Indian Contract Act does not apply to the case: and

That the doctrine of *lis-pendens* applies to the claim, which cannot be maintained in the absence of a special agreement as plaintiff was a purchaser with knowledge of Jenmi's suit and the purchase must be taken to have been made subject to the charge that might be created by the result of the suit. *Varki* vs. *Meethian*. 12. T. L. R., 17.

6.—*Whether applicable in respect of suits for removal of Karanaven.*

Held that the doctrine of *lis-pendens* does not apply to suits brought for the removal of Karanavens. Until the date of actual removal the Karanaven must continue to exercise his functions as head of the family. *Velayudhan* vs. *Velayudhan*. 12. T. L. R., 67.

LIVE STOCK—maintenance of, when atttached. See Civil Circular 8 of 1061. 4. T. L. R., App. 21.

MAGISTRATE.

1.—*Administration of oath by 3rd class Magistrates.*

Held that Magistrates of the 3rd class have the power to administer oaths in cases tried before them. *Criminal Circular No.* 9 *of* 1057. 1. T. L. R., 37.

2.—*2nd and 3rd class Magistrates—Calendars.*

Ordered that 2nd and 3rd class Magistrates should send their calendars to the first class Magistrates. *Criminal Circular No.* 10 *of* 1057. 1. T. L. R., 38.

3.—*1st class Magistrates—Calendars.*

Ordered that 1st class Magistrates do send to the High Court within 48 hours of the passing of sentence, duplicate copies of their calendars in cases tried by them. *Criminal Circular No.* 13 *of* 1057. 1. T. L. R., 39.

4.—*1st class Magistrates—Appeal statements.*

Ordered that 1st class Magistrates do send their appeal statements to the Sessions Judges who will send another statement embodying the same, to the High Court besides their monthly appeal statement. *Criminal Circular No.* 18 *of* 1057. 1. T. L. R., 39.

5.—*Magistrate having personal knowledge.*

Held that a Magistrate having personal knowledge of the facts fo a case, is incompetent to try the same. 4. T. L. R., 93.

MAHOMEDAN LAW.

1. Debts.
2. Gift.
3. Inheritance.
4. Maintenance.
5. Public Institutions.

1. Debts.

——*Precedency of owner's debts over claims of heirs—Deed of hypothecation—Debt by senior male member.*

The parties are Mahomedans. A, the father of B, and the paternal uncle of C and D, executes a deed of hypothecation to E. E sues B, C and D for recovery of the money due thereunder. B, C and D, while pleading discharge, contend that inasmuch as the debt was not incurred for their benefit, neither they nor their shares of the hypetheca are liable for the same.

Held that C and D are competent to question the binding nature of the debt as against them and their interest in the property hypothecated. That the circumstance that A was, at the time of the creation of the charge upon the property, the senior male member, raises *prima facie* a presumption that the debt was incurred for the benefit of the family and should be a proper charge upon the common property, though this is but a rebuttable presumption.

That to declare the interest of C and D in the *hypotheca* liable for the debt of A, it must be proved to have been incurred for family purposes and for their benefit as well.

That B, being the son of A, takes his father's estate, subject, of course, to all his liabilities, in that, under the Mahomedan Law, the debts of the owner take precedence over all claims by way of inheritance. *Abdoolkader* vs. *Harihara Aiyer*. 6. T. L. R., 23.

2. Gift.

1.—*Gift by father to his minor children—Dower—*

Held that though, under the Mahomedan Law, seizin is necessary to validate a gift, a gift by a father to his infant children (son or daughter as the case may be) who may not have the capacity of distinguishing between that which is advantageous for them, and the reverse, is completed by the mere declaration of it, and there is no necessity for acceptance or seizin on the part of the donee, the reason of the rule excepting the case of a gift by father to his infant children, from the general rule relating to acceptance and seizin, being that the father's possession is equivalent to the possession of his children, he being their natural and lawful guardian;

that the gift in such cases being complete by the mere declaration, of the father, his retention of the subject of such gift is simply in the capacity of guardian or trustee of the infant, it being also a rule of Mahomedan Law that a gift to a kinsman cannot be revoked, the object of such gift being an increase in the ties of affinity or improvement of the ties of family affection ; and that a gift of an undefined portion of land is null and void under the Mahomedan Law.

Held also that dower, in Mahomedan Law, is anything and everything agreed to be paid by the husband to the wife, in consideration of the marriage, and presents agreed to be given by the father to his daughter, not falling under the category of dower. *Mahammathumiravummal* vs. *Mahammathakannu.* 6. T. L. R., 86.

2.—*Gift during death-sickness, in favour of one child—Invalidity of.*

Death-sickness, as defined in the Mahomedan Law, is sickness which has not been of long continuance, and when it is such that it is highly probable that death will be the result, whether the sick person has taken to bed or not.

According to the same law, a gift made by a father during death-sickness, of all his property in favor of one child, to the exclusion of the others, is invalid. A gift during such sickness, with delivery of possession, is valid to the extent of a third share, only where the donee is a stranger and not an heir entitled to a share in the donor's estate by right of inheritance. *Kadir Ummal* vs. *Pakkir.* 12. T. L. R., 162.

3. INHERITANCE.

1.—*Shares of widow and children.*

Under the Mahomedan Law, the share of one son in the property of his father who leaves 11 sons, 3 daughters and a widow (mother of Plaintiff), is $\frac{7}{100}$ of the whole property, the share of a widow having children being $\frac{1}{8}$ of the whole, and that of each daughter one-half of the share of each son in the remaining $\frac{7}{8}$. *Mahammathu* vs. *Mahammathu.* 8. T. L. R., 86.

2.—*Suit for share in ancestral property—Limitation—Joint Family Property—Applicability of Hindu Law to Mahomedans—Limitation Regulation, Articles* 101 *and* 105—*Cause of Action.*

The parties are Mahomedans and the suit is for recovery of plaintiffs' shares in ancestral property.

Held that the members of a Mahomedan family, though undivided, do not form a joint family in the sense in which the expression is used in Hindu Law :

That courts cannot, as a matter of law, extend the rules and presumptions applicable to Hindu joint families to Mahomedans, though they may reside in a Hindu State and among Hindus:

That the words 'joint family property' used in Article 105 of the schedule appended to the Limitation Regulation cannot point to property owned by Mahomedans claiming descent from a common ancestor or ancestress and undivided among themselves:

That, consequently, the presumption of joint possession does not arise in this case:

That Article 101 (last clause) governs the case, unless it is clearly proved that plaintiffs continued in joint possession of all the plaint properties with the other sharers and residuaries, or at least some of them:

And that such joint possession not having been proved, the suit brought after 12 years from the date on which plaintiffs' right to claim the shares accrued, is barred under Article 101 of the Limitation Regulation. *Kunjummal* vs. *Kochukunju*. 11. T. L. R., 125.

4. MAINTENANCE.

——*Award of, in suit for partition or for recovery of property.*

In suits brought for partition or for recovery of property, by persons who fail to prove their right to the relief asked for, the courts may award maintenance out of the property sued for, if the plaintiffs are entitled to maintenance. *Nagurmeeral* vs. *Meera Ravuthar*. 9. T. L. R., 174.

5. PUBLIC INSTITUTIONS.

——*Appointment of Kazi. Adverse possession—Sufferance. Mahomedan Law—Public Institutions—Manager. Mosques—Simultaneous worship in. Right of burial.*

Suit with respect to a mosque at Alleppey. The plaintiffs and defendants belong to the same sect of Mahomedans, but are divided into two local parties known as the "eastern" and "western." The chief questions raised are (i) who is competent to appoint the Kazi, (ii) whether 1st and 2nd defendants who have been managers of the mosque for a long time, are entitled to continue in management, (iii) whether simultaneous Friday service can be held in the plaint mosque and another local mosque belonging to the same sect, and (iv) whether the eastern party is entitled to bury their dead in the grave-yard attached to the plaint mosque.

Held that the power to appoint Kazis rests in the Sovereign of the State.

MAHOMEDAN LAW.—(*Concluded*).

That the 1st and 2nd defendants being managers on mere sufferance, cannot claim title by adverse possession, unless they shew that the community was aware that they (the managers) professed to act independently of and adversely to it, mere sufferance being insufficient either to create a right, or to bar an existing right :

That where the founder of a public institution has made no arrangement for the appointment of managers therefor, the power to appoint them, under the Mahomedan Law, vests in the Kazi :

That simultaneous service in the two mosques may be held by the community, on the score of convenience, under the advice of their spiritual leaders ; but that, until this is formally and regularly done, the practice found on the evidence to have been in vogue until defendants altered it, should be followed :

And that the plaint mosque being found to be common to the whole community, every member thereof has a right of burial in the grave-yard attached to it, subject to all lawful regulations which the properly constituted authorities of the institution may, from time to time, prescribe in the interests of the community. *Abdalkadir* vs. *Mamokkar*. 10. T. L. R., 20.

MAINTENANCE.

——See cases under Criminal Procedure Code.

——See cases under Hindu Law maintenance.

——See cases under Mahomedan Law.

——See cases under Malabar Law.

MAJORITY.

——*Age of, in Travancore.*

The age of majority, as fixed by the common law of Travancore, Syrian christians not excepted, is sixteen years. *Powlo* vs. *Thoma*. 8. T. L. R., 22.

MALABAR BRAHMINS.

1. Adoption.
2. Alienation.
3. Gift.
4. Miscellaneous Cases.

1. Adoption.

1.—*Adoption of sister's son—validity of.*

Held, inter alia, that the ordinary Hindu Law has no application to adoptions made by Malabar Brahmins ; and the customary

law obtaining in that community, sanctions the adoption of sister's son. *Easwaran* vs. *Sambhu.* 9. T. L. R., 160.

2.—*Re-admission of suit—Mother's competency to sue on son's behalf—Adoption—Chanchamatha Adoption—Effect of. Adoptee dying without issue—Succession.*

Held (by Kunhiraman Nair, J., in the High Court) that where a suit in which issues have been recorded and a date fixed by the Court, of its own motion, for production of evidence, is dismissed on plaintiff's defaulting to appear on that date, its restoration to the file under section 108 of the Code of Civil Procedure (old) is not irregular.

Held also that the mother of a minor in a Malabar Brahmin family may sue on his behalf, provided the responsible manager, *i.e.*, the senior male member, is made a party to the suit.

Held on the evidence that there are three kinds of adoption prevalent among Malabar Brahmins, *viz.*, (i) *Patthukayyal Dattu*—Adoption with ten hands (the most approved form) ; (ii) *Chanchamatha Dattu*—Adoption in which the essential ceremony, besides gift and acceptance of the adoptee, consists in putting into the fire or sacrificing a span of sacred grass ; and (iii) *Ayattha Vidhi Dattu*—Adoption by merely taking into the family and constituting the appointee as heir to the adopter, without any religious ceremony.

Held further that the *Chanchamatha* adoption confers the right of sonship on the adoptee, though not as efficacious from a religious point of view as the *Patthukayyal Dattu* :

That such adoptee loses all right in his natural family except to offer *Pindams* to ancestors and to succeed to property of that family in default of other members therein, and becomes a member of the joint family to which he is adopted :

And that the joint family property in which he may obtain an interest by the adoption, would not vest in him as gift, and cannot, on his death without issue, be inherited by members of his natural family. His death would leave the adoptive family in the position it occupied before the adoption.

Held by the Royal Court of Final Appeal, who concurred generally in the foregoing rulings.

That under the general principles of Hindu Law which govern the rights of adoptees in Malabar Brahmin families, the heirs of an adoptee dying without issue are members of the adoptive family. *Narayaner* vs. *Nangeli Anther Jenom.* 10. T. L. R., 151.

MALABAR BRAHMINS.—(*Continued*).

2. ALIENATION.

1.—*Pothies—Alienation—Wife's and minor son's right respectively to question.* A, a Malabar Brahmin makes a sale of ancestral property to B. C and D, who are son and wife respectively of A, seek to set aside such sale on the ground that it is void for want of their written assent and for want of adequate family necessity. C was, moreover, a minor at the date of the sale.

Held that, under the Hindu Law, D (the wife) is not strictly a coparcener of A (the husband), and it has been ruled that a wife is not at liberty to impeach an alienation made by her husband of ancestral property, for proper family purpose, the wife's right extending only to maintenance; but she may be entitled in equity to seek to set aside alienations made in fraud of her claim for such maintenance.

Held also that as to the right of C (the son) who was a minor at the date of sale, the presumption in cases of alienation by a Hindu father, is that it was made for the benefit of the whole family; and a sale in such cases cannot be set aside unless family necessity is disproved. *Parameswaram Pothi* vs. *Mathen.*

6. T. L. R., 143.

2.—*(Numburi) family—Effect of alienations by managers of, without consent of junior members—Mortgage by Jenmi, subject to renewal—Nature and effect of. Validity of, as against member who assented thereto by receiving Michavaram due thereunder.*

Held by a FULL BENCH that the Manager of an Illam has no power to alienate permanently, by sale, gift or otherwise, any portion of the common property, without the consent, express or implied, of the other members of his family:

That temporary alienations made by him in the shape of leases, mortgages, &c., for short and customary periods, must stand, subject, however, to the right of the junior members to impeach them on the grounds of want of consideration and family necessity:

And that the mortgage-deed, executed as it was by a Jenmi, providing for renewal at the expiration of 12 years, creates a perpetual right, and, as such, requires the assent, express or implied, of all the members of the Illam.

Held also by the Division Bench that the deed being a registered one and plaintiff having admittedly received the Michavaram due thereunder for 10 years, his assent to the deed, should be inferred. *Chennan Namburi* vs. *Narayanen.* 11. T. L. R., 1.

MALABAR BRAHMINS.—(*Continued*).

3.—*(Namburies)—Family of—Similarity to Marumakkatayam families—Female member's right to protect family property—Widow's right to impeach alienations by Karanavan.*

Held by a FULL BENCH that, in the management and enjoyment of property, the customs of Namburies do not differ from the customs of the Malayali Sudras, the only difference between the two classes in the matter being that Namburies follow the law of descent through sons; that the female members of an Illam have the right to take steps to conserve Illam property; and that, therefore, the widows of the deceased male members of a Namburi Illam are competent to sue to set aside alienations of Illam property by the Karnavan. *Sambhu* vs. *Devaki Anther Jenom.*

12. T. L. R., 46.

3. GIFT.

1.—*Sarwaswadanam gift—Right under. Improvement—rate of for buildings.*

A *Sarwaswadanam* done acquires, under such gift, a life estate in the subject thereof, and management of the property till his death, though as trustee for his children. His right thereunder will not be affected by the birth of an issue to him by his *Sarwaswadanam* wife.

In the case of buildings, the tenant is entitled, in the shape of compensation for improvement, to the full value that may be assessed at the time of eviction. *Koshi* vs. *Devaki Anther Jenom.*
9. T. L. R., 148.

2.—*(Namburies)—Married woman's right of—Succession—Daughter of Desarathri Gnathi—Gift—Natural affection—Consideration.*

Held that the leading principle of succession among Malabar Brahmins is that the successor must be a member of the Illam; that as a woman of the class takes her husband's *Gotram* on marriage, unless the marriage is in the Sarwaswadanam form, a daughter married otherwise than in the form aforesaid, will not be entitled to succeed her father as his heir; and that a Sapinda with 10 days' pollution—a *Desarathri Gnathi*—succeeds to the exclusion of a daughter so married.

A gift of immovable property made by the father to his daughter, accompanied with possession, is valid, natural affection being a good and sufficient consideration for the disposition. *Krishnar* vs. *Vasudevar.* 12. T. L. R., 157.

MALABAR BRAHMINS.—(*Concluded*).

4. Miscellaneous Cases.

——Suit by a Nampoori lady on behalf of her minor son for recovery of Tarawad property.

A, a Nampoori lady, sues B on behalf of her minor son C, for recovery of land and rent. Her husband (D) is alive, but is alleged to be of unsound mind. B objects to the right of C to carry on the suit during the life-time of D (C's father) in C's name.

Held that D, the father of C (the minor) is, according to the law by which the Nampoories are governed, the present head of the Tarawad; that suits relating to Tarawad property must, therefore, be instituted in his name by his next friend or guardian; and that there is no objection to A (D's wife and C's mother) acting as D's next friend and guardian. *Neelacandan* vs. *Savithri.*

7. T. L. R., 33.

MALABAR LAW.

1. Adoption.
2. Alienation.
   - (*a*) General Cases.
   - (*b*) Mortgage.
   - (*c*) Sale.
   - (*d*) Gift.
   - (*e*) Endowment.
3. Appointed Karanavan or manager.
4. Debts.
5. Decree against Karanavan or other members of Tarawad, Effect of.
6. Division.
7. Heir.
8. Junior Members—Right to sue.
9. Liability of Tarawad property.
10. Limitation of powers of Karanavan or other members of Tarawad.
11. Maintenance.
12. Self-acquisition.

1. Adoption.

1.—Nilamma Iswari, the mother of the second defendant and the grandmother of the 3rd and 4th defendants of the Vilayil house together with Bagavathi Lakshmi of the Vilayil house, was adopted into the Peru house under a Royal neet which contained the

following clause " *அய்யப்பன் நாராயணன்றே சேஷகாரராயிட்டு பகவதி லக்ஷ்மியேயும் நீலம்ம இசுவரியேயும் அவருடே குடும்பத்திலுள்ள மதிலகத்தே சம்மந்தவும் ஸ்தானமானத்தோடுகூடே கா௱கூ௰அ-ம் ஆண்டு மிதுன மாசம் அ-ம் தியதி முதல்க்கு தத்து அவகாசமாக்குகையில்.*

Held on the construction of the neet of adoption, that the adoptees did not lose their rights to the property of the house from which they were adopted. *Bagavathi* vs. *Mathevan.* I. T. L. R., 24.

2.—*Adoption—Payment of Adiyara fees.*

Held that payment of Adiyara fees is not the indispensable condition precedent to the confirmation, by the Sovereign of this State, of adoptions in the families of Malayalis, and that, this being so, the non-payment of such fees on the value of certain property, cannot really affect the validity of the Royal Grant, since Neets of adoption are often granted by His Highness theMaha Rajah without any payment of fees and sometimes without the payment of the Adiyara fees on the whole estate of the Tarawad. *Raman* vs. *Padmanabhan.* 6. T. L. R., 108.

3.—*Adoption—Payment of Adiyara fees.*

The plaintiff, a second mortgagee, sued for the redemption of a prior mortgage by the Karanavan of a Malabar Tarawad. Defendant contended that the Karnavan had no power to execute the second mortgage, he having been, since the date of the first mortgage, adopted into another Tarawad under a Royal Neet.

Held unanimously by a FULL BENCH that the object of adoption among the Sudras, is purely secular, being either the perpetuation of the Tarawad and the conservation of its endowments or its advancement in the social scale—this last being known as *Jathi Sreshtatha* adoption; that Sudra adoption has some resemblance to the *Krithrima* form of adoption recognised by the Hindu law; that there are three kinds of adoption among the Sudras, namely; of a whole family, of a few females, and of a few males and females, that there is no limit of age or number; that, generally, the parties should be of the same caste; that, in Travancore, the adoption of a person of a lower order into a higher order is permissible; and that the confirmation by a Royal Neet issued upon payment of *Adiyara* fees, is necessary to confer validity on adoption.

Held also that, where one or more only of the Tarawad and not the entire family, are adopted into a new one, the adoptees forfeit their rights in their natural family in the absence of a special reservation to the contrary; but that, if the adoption be wholesale, the adoptees retain their full rights in their old family,

though they may acquire new rights in the new Tarawad; that the properties of the adoptees held in their own right should be viewed as separate or self-acquired property; that the adoptive Karanavan can have no more right over the property of his adoptive Seshakar than the natural Karanavan over that of his natural Seshakars; and that the Royal Neet was not intended to confer upon the adoptive Karanavan any rights in the natural Tarawad of his adoptive Seshakars.

Held further that *Adiyara fees* are, as a rule, to be paid by the Tarawad of the adoptee or adoptees; that where the adoption is of one's own children—which is preferred—the *Adiyara fees* is to be equal to one third of the gross value of the property of the adopter; but where those to be adopted belong to a strange Tarawad, the fee is to be equal to one-half of the adoptee's property; and that sometimes an extra fee is levied when the parties are not of the same grade. *Eswaran* vs. *Ramaswami Aiyar.* 7. T. L. R., 67.

2. ALIENATION:

(*a*) GENERAL CASES.

1.—*Right of Malayali Convert to Christianity to question alienation by Karanavan—Right to maintenance.*

Held by the majority of a FULL BENCH that a Malayali governed by the Marumakkathayam Law but converted to Christianity, has no right to dispute alienations made by the Karanavan of the Tarawad on any ground whatever. *Held further* that he has no claim upon the Tarawad for maintenance and no right to retain possession of the property given him for maintenance while he remained a Hindu. *Seelinalidia* vs. *Iyappen.* 4. T. L. R., 12.

2.—*Alienation of Tarawad property, unquestioned by member competent to question—Suit to cancel, by minor—Limitation. Nature of right to bring an action to invalidate the act of a Karanavan.*

Where, in a Malabar Tarawad, the adult members who were competent to contest an alienation of Tarawad property neglected to do so for a period of 12 years, it is not competent to a member who happened to be a minor at the date of the alienation to question its validity after the expiry of that period:

Held also that the right to bring an action to invalidate the act of a Karanavan is the right of the Tarawad. *Parameswaran* vs. *Mathen.* 4. T. L. R., 34.

3.—*Alienation of property by Karanavan—Validity of alienation as against the alienor's Tarawad.*

Held that it is not because the Karanavan of a Tarawad is in possession, that every alienee is entitled to claim, as against the Tarawad, property wrongly alienated by the Karanavan.

Held also that a plaintiff, in a case like the present, is bound to establish affirmatively both the factum and the validity of the alienation as against the alienor's Tarawad, before he could recover the property from the members of the Tarawad. *Kalliani* vs. *Krishnan*. 6. T. L. R., 132.

4.—*Sole member's power of alienation—Adopted member's right to impeach charges created by the adoptive Karanavan—Liability of ancestral and personal assets for debts.*

The deceased adoptive Karanavan of defendants executed an agreement to plaintiff—conductor of a chitty—to pay duly the subscriptions due by his (the former's) wife, a prized subscriber. The agreement was executed before the adoption of defendants by the executant who was at the time sole and absolute owner of the properties of his Tarawad. Plaintiff sues under the agreement for recovery of arrears of subscriptions, and the lower Courts find that the debt cannot be charged on the Tarawad, but must be recovered by the sale of the personal assets of the deceased Karanavan.

Held in Special Appeal that defendants' right to the ancestral properties of the deceased adoptive Karanavan accrued only after the agreement, that they succeeded to the estate subject to all charges and liabilities created by, as well as all incidents following from, the acts of the adopter, and that, consequently, defendants are liable to pay the plaint-debt to the extent of assets—ancestral or self-acquired—which have passed to their hands by the adoption. *Krishnan* vs. *Lakshmi Pillai Tangachy*. 11. T. L. R., 28.

5.—*Consent of Seshakar—Sale of mortgage rights.*

The assent of Seshakars is required not only in cases where the proprietary rights on immovable properties of the Tarawad are permanently alienated, but also where a sale or permanent transfer of immovable property of a Tarawad, on whatever tenure it may be held by the Tarawad, is made by a Karanavan. *Martandan* vs. *Velayudan*. 12. T. L. R., 97.

2. (*b*) MORTGAGE.

1.—*Otti and Kulikanom.* When through no default or laches of an Otti and Kulikanom mortgagee, his otti is disturbed and his

interest thereby materially affected, he may sue to recover the mortgage money from the mortgagor. 2. T. L. R., 69.

2.—*Mortgage of family property by Karanavan—Presumption of family necessity—Consent.*

Any member of a Tarawad is entitled to dispute the necessity or the good faith of a mortgage of family property by the Karanavan, even if he was supported by the chief Anandaravars. The presumption of family necessity by their taking part in the alienation, though strong, is rebuttable. A mortgage of Tarawad property for a term of years requires the consent of all the members of the Tarawad in the same manner as sales. *Manika* vs. *Krishnan.* 3. T. L. R., 44.

3.—*Mortgagee without possession—Second mortgagee's lien. Money realized by sale of the mortgaged property. Kulikanom mortgage without possession. Mortgagee's right to sue for the mortgage amount before 12 years.*

Where money is realized by sale of lands mortgaged to more than one person and brought to sale by the first mortgagee, the surplus after satisfying his decree must be held for the benefit of the subsequent incumbrancers, if they are parties to the suit in which the decree was obtained, and, subject to their claims, for the benefit of the mortgagor.

The conditions of a usufructuary mortgage, which is irredeemable for a term of years, can bind the mortgagee only where the mortgagor places him in possession; but where the property is in the possession of a third person and is lost to the mortgagee, he is in the same position as a usufructuary mortgagee who has not been in possession, and can sue for his money before the expiry of the term (12 years). *Aiyappan* vs. *Sankaran.* 9. T. L. R., 82.

SEE CASES UNDER "BURDEN OF PROOF, MALABAR LAW."

2. (c) SALE.

1.—*Sale of immovable property by members of a Tarawad.*

Amongst those following the Marumakkattayam law, it is a well-known rule that the immovable property of the Tarawad is inalienable except under adequate family necessity. The signatures of a Karanavan and Senior Anandaravan will be presumptive evidence of such necessity, but in no wise exclude the sale being questioned by others jointly entitled. *Ouseph* vs. *Govindan.* 1. T. L. R., 94.

MALABAR LAW.—(*Continued*).

2.—*By Karanavan.*

The law is perfectly clear that where there is an Anandaravan of adult years and not otherwise disqualified, a sale by the Karanavan alone, is bad in law, even though such sale is assented to, by a female member of the family. 2. T. L. R., 68.

3.—*Sale by Junior Members—Redemption of mortgage.*

A and B obtain decrees for redemption of mortgaged property. A dies and B assigns his interest in the decree to C. C seeks to execute the decree, when members of the assignor's family interpose and object to the assignment on the ground that it was not made with their assent. Upon this, the Court declines to recognise the assignment. B having died since, the objecting member and 4 others belonging to the same Tarawad execute another assignment to C. This assignment is likewise objected to by 3 members of the family. In the meantime, the property is attached by D in execution of a decree obtained by him against A and B.

Held that both sales are invalid as they were not made with the consent of all the members of the Tarawad.

Held further that the principle of *ratihabitœ* applies only when the first act was done avowedly in a representative character, and the ratification must cover the first act fully. 5. T. L. R., 6.

4.—*Sale by Anandravan—Consent by Junior member.*

A and B, the Karanavan and senior Anandaravan respectively of a Malabar Tarawad, sell certain property for raising money to meet the funeral expenses of C, their mother. D, the adult junior member of the Tarawad, seeks to set aside the sale, on the ground that without his (D's) consent, A and B (his senior kinsmen) are incompetent to alienate the Tarawad property permanently. E (the purchaser of the property) contends that the sale having been made by the Karanavan and senior Anandaravan (A and B) for purposes of Tarawad, is valid and binding on D. D does not dispute the liability of the Tarawad to refund the purchase money to E in the event of the sale being set aside, his (D's) contention being that no permanent alienation should be made without consulting all the adult members or at least such of them as may be present with a view to enable any one of them to meet such demand and of thus preventing the permanent loss of the property to the Tarawad.

Held (by a majority of a FULL BENCH) that, as a matter of law, every Seshakaran who is *sui juris*, has a right to be consulted before permanent alienations of Tarawad property are concluded; that

it makes no difference that the sale was to pay off a family debt or not; and that, hence, the sale impeached by D is void for want of his assent. *Krishnan* vs. *Ayppu.* 6. T. L. R., 49.

5.—*Impugnment of sale held in execution of decree against Karanavan. Want of consideration—Proof.*

Where a third party purchases Tarawad property sold in execution of a decree against the Karanavan of a Marumakkathayam Tarawad, and the Anandaravars sue to set aside the sale on the grounds of absence of Tarawad necessity and want of consideration for the transaction which formed the basis of the suit wherein the decree was passed :

Held that it must be presumed that the purchase was made *bona-fide* without notice of defect in the original transaction or the subsequent decree, unless and until the contrary is proved.

Held also that, unlike as in the case of a decree-holder who becomes also the purchaser in auction, the burden of proving consideration and family necessity cannot be thrown on the purchaser, if he happens to be a third party who had nothing whatever to do with any of the proceedings which led to the sale.

Held further that in cases of this description, the burden of proving that a decree against a Karanavan *de jure* and *de facto* is not valid or binding on the Tarawad, is on those that impeach its validity or its binding nature. *Sankaran* vs. *Keshavan.*

7. T. L. R., 155.

6.—*Sale by Karanavan—Consent of Seshakar—Burden of proof as to dissent—Modus of proof as to consent.*

Held that alienations by Karanavan in the form of sales are invalid unless made with the assent of the junior members, express or implied ; that the signature of the senior Seshakaran, if *sui juris*, is ordinarily sufficient evidence of the assent of himself and the rest of the Seshakars, and throws the burden of proving dissent therefrom on those who allege such dissent and that it is no absolute rule of law that assent of the senior Seshakaran should be in writing, his assent, like that of other members, being provable by other means. *Geevareeth* vs. *Raman.*

7. T. L. R., 159.

7.—*Sale by a Koottukaran of a Malabar Tarawad in favor of his son—Seshakar's competency to question same—Want of consideration.*

A makes a sale of a certain property to his son B. C and D claiming themselves to be the Seshakars of the deceased, sue to

set aside the sale on the ground of want of consideration and family necessity. The defence is that the alienation was made to raise money for discharging Tarawad debts.

Held that a sale is legally complete on the receipt by the vendor of any portion of the price; that, therefore, B has acquired a complete title to the property in dispute and that C and D have no right to question the sale.

Held also that even if B had paid no consideration to A for the sale, the alienation is good, as A had made it out of natural affection to B, his son, and in performance of a parental duty. *Mathevan* vs. *Narayanan*. 7. T. L. R., 10.

8.—*Status of persons adopted. Applicability of the principle of consent of Seshakar to sales by Court. Presumption of Tarawad necessity for debt unimpeached by Seshakar for* (12) *years. Karanavan's power to revive barred debt.*

Where several persons are together adopted into a Marumakkatayam Tarawad, they thereby form one Tarawad, the senior male member among them being the Karanavan with the same rights and privileges as he would have had in his natural family, if he were Karanavan thereof. Adoption would not confer on the junior members any more privileges than those which they would have had in their natural family.

A sale by court, of Tarawad property, in execution of a decree against the Karanavan, being held not merely on behalf of the Karanavan individually, but on his behalf as representative of the Tarawad, absence of the Seshakar's consent, cannot invalidate the sale, as in the case of a private sale by the Karanavan.

Tarawad necessity must be presumed in favor of a debt contracted by the Karanavan and questioned by the Seshakar only after a long time (12 years in the case), unless there is proof to the contrary.

A Karanavan is competent to revive a barred debt on behalf of the Tarawad. *Kotha* vs. *Krishnan*. 9. T. L. R., 100.

3.—*Sale in execution of decree—Decree against Karanavan of Marumakkatayam Tarawad—Cause of Action to set aside decree—Suit to set aside sale—Maintainability of, without prayer to cancel decree—Limitation. Interpretation of the rule " A decree passed against the Karanavan binds the Tarawad."*

Held that the cause of action to set aside a money decree against the Karanavan of a Marumakkatayam Tarawad, by the

Seshakars, arises only on execution thereof on property belonging to the Tarawad :

That a suit by the Seshakars to set aside a court-sale of Tarawad property held in execution of a decree passed against the Karanavan, is governed by one year's limitation computed from the date of the sale :

And that a suit to set aside a court-sale held in execution of a money decree against the Karanavan, by the Seshakars, is maintainable without a prayer in the plaint to cancel the decree.

The rule that 'a decree passed against the Karanavan binds the Tarawad' though meant to dispense with the necessity of making all the members of the Tarawad parties to the suit brought against the Karanavan, does not affect the right of the Tarawad to question the validity of any proceedings held in execution of the decree passed in such suit affecting its property. *Kelan* vs. *Kochittyathi.* 11. T. L. R., 77.

10.—*Sale by Karanavan—Suit to cancel, by member who was a minor on date of sale—Limitation—Consent—Presumption as to sale assented to by senior member—Minor's right to impeach transactions on Tarawad's behalf.*

In a suit to set aside a sale by the Karanavan, of immovable Tarawad property, by a member who was a minor at the time of the sale :

Held on the authority of the decision in A. S. No. 124 of 1062 reported at IV, T. L. R., p. 34, that the suit having been brought twelve years after the date of the sale, is barred.

Held also that, in the case of a sale by a Karanavan, the signature of the chief Anandaravan, if *sui juris*, is sufficient evidence of the assent of themselves and of the other members of the Tarawad ; and where, as in the present case, more than 15 years are allowed to lapse without impeachment of the sale, it may be presumed to have been made for proper purposes.

Held further that the minor members of a Tarawad are concluded by the transactions entered into by adult members, in the absence of fraud. *Keshavan.* vs. *Keshavan.* 12. T. L. R., 99.

2. (*d*) GIFT.

1.—*Sale by last surviving member—Escheat.*

When the last survivor of a Marumakkatayam family executes a deed of sale and conveys the family property to his wife, it is immaterial whether such conveyance is for valuable consideration

or not, as, under the circumstances, the sale may be regarded as a gift. Such conveyance cannot be challenged by the Sirkar on the ground that it will prevent an escheat. *Narayani* vs. *Sirkar*. 1. T. L. R., 92.

2.—*Gift by father—Nature of children's rights to—Compulsory partition.*

Held that gifts by the father known in Travancore as Makkatayam and in British Malabar as Puthravakasom are ordinarily intended to benefit all the children of the donor by the same mother, and the properties which form the subject of gift, though usually registered or acquired in the name of the mother, are held by the mother and children in common under the management of the mother or the next senior competent male or female among the donees.

That the manager of such property acts for the benefit and as trustee of all parties interested in the property and is commonly allowed the same powers and privileges as the Karanavan of a Tarawad.

That compulsory partition of joint or common property of a Marumakkatayam family cannot be allowed. *Narayanan* vs. *Nangali*. 5. T. L R., 116.

3—*Makkatayam (gift by father) of property—Separate Tarawad—Decree against Karanavan of the sub-Tarawad—Binding effect of on the other members—Suit to set aside court sale of the sub-tarawad's property—Limitation*

Held that in respect of Makkatayam property (*i.e.*, property acquired in the name of, or given to, wife and children by the husband and father) among people following Marumakkatayam law, the donees or beneficiaries form a separate Tarawad, of which the senior male member among the donees or beneficiaries is the Karanavan, with all the powers and privileges of the Karanavan of an ordinary Marumakkatayam Tarawad.

That a decree against such Karanavan and the proceedings held in execution thereof, would bind the other members of the sub-Tarawad, unless and until they are set aside by a decree of court in a suit brought for the purpose.

And that a suit brought by the other members of the sub-Tarawad, to set aside a court sale of its property in execution of a decree against the Karanavan thereof, would be barred, if not brought within one year from the date of the confirmation of the sale. *Kalliani* vs. *Lakshmi*. 11, T. L. R., 139,

MALABAR LAW.—(*Continued*).

2. (c) ENDOWMENT.

——*Property dedicated to Kalari—Religious Endowment—Alienation.*

When, under a family compact, property belonging to a Tarawad is dedicated to the *Kalari* or house-hold deity, the property thenceforth ceases to be property of the Tarawad except, or otherwise than, as representing the *Kalari* or house-hold deity, and can be encumbered, if at all, only for purposes essential to the *Kalari*. *Kurumpa* vs. *Kannan*. 10. T. L. R., 72.

3. APPOINTED KARANAVEN OR MANAGER.

1.—*Marumakkatayam Tarawad—Document assigning management of —Cancellation of. Act of Waste. Separate Maintenance.*

A (the eldest male member of a Marumakkatayam Tarawad) executed a registered document in favour of B (his younger brother. assigning to the latter the management of the Tarawad property. Subsequently, A sued B for setting aside that document on the ground that B had committed acts of waste, and neglected to support A and his mother.

Held that the neglect to repair an unoccupied building is not certainly such an act of waste as to justify the extreme step of the defendant's dismissal from the managership; that the general rule of Marumakkatayam law does not favour the allotment of separate maintenance; and that the cancellation of a document at the instance of the party who executed it is discretionary with the courts. *Raman* vs. *Kochukunju*. 10. T. L. R., 195.

2.—*Appointed Karanaven—Competency to sue for possession of Tarawad property—Res-judicata—Decision by inferior Court—Subsequent suit in superior Court—Vendee's liability for mesne profits on cancelment of alienation by Karanaven.*

Suit (filed in a Zillah Court) to recover possession of Tarawad property held by defendants under a sale cancelled by Court on plaintiff's motion, in a previous suit (filed in a Munsiff's Court) wherein possession was not decreed to plaintiff, as he was then only a junior member of the Tarawad. Plaintiff has, subsequent to the first suit, been appointed Karanaven under a registered deed.

Held on the main questions raised :—

(i) That where a member of a Marumakkatayam Tarawad is appointed Karanaven under a registered deed by the *de jure* Karanaven and the other members of the Tarawad, the deed is not merely a power of attorney; and the member so appointed is competent, by virtue of such appointment, to sue for possession of Tarawad property in the capacity of Karanaven.

MALABAR LAW.—(*Concluded*).

(ii) That the fact of a decision being by an inferior Court would not preclude its being *res judicata* upon all points decided thereby, and raised in a subsequent suit filed in a superior Court, between the same parties and in respect of the same subject-matter, provided the inferior Court was competent to try the case at the time it recorded its decision. The fluctuations in the price of property and the consequent changes of pecuniary jurisdiction cannot be allowed to revive claims once finally adjudicated.

(iii) That the defendants in the suit are not trespassers and are not liable to account to the Tarawad for mesne profits until the date of the present suit. *Aryappen* vs. *Kela*. 11. T. L. R., 208.

4. DEBTS.

1.—*Presumption—Debt contracted by managing Karanaven.* A debt contracted by a managing Karanaven is presumed to be a family debt and the burden of proving the contrary is on the party denying it. *Thomma* vs. *Ittaly*. 3. T. L. R., 42.

2.—*Presumption as to debt contracted by Anandaravers and acknowledged by Karanaven. Burden of proof as to invalidity of debt contracted by Karanaven.*

Held that when a Karanaven acknowledges a debt contracted by his Anandaraven, the presumption is that the debt was originally contracted under orders of the Karanaven: and that there is nothing in law to support the view that a Karanaven should not discharge obligations incurred by his Seshakars in connection with Tarawad affairs.

Held also that the presumption of Malabar law being that a debt contracted by a Karanaven is for Tarawad purposes, it is on those who dispute the charge to prove the contrary. *Mathevan* vs. *Raman*. 5. T. L. R., 28.

3.—*Competency of Karanaven to renew or acknowledge barred debt on behalf of Tarawad represented by him.*

Held that a *bona fide* acknowledgment of a barred debt made by the Karanaven, binds the Tarawad. S. A. No. 260 of 1064. 7. T. L. R., 99.

4.—*Debt contracted by Karanaven for Kallyanam expenses and redeeming mortgage. Creditor dealing with Karanaven—Liability of, to enquire into necessity for the loan—Burden of proof as to application of loan.*

Held that a debt contracted by a Karanaven for redemption of Tarawad property outstanding on mortgage and for the expenses of the marriage of his Seshakaris is binding on the Tarawad.

Held also that a creditor acting in good faith on the representations of a *de jure* and *de facto* Karanaven as to the necessity for a loan, is not bound to make independent enquiries into the truth or otherwise of such representations, nor to look to the due application of the money advanced by him. *Padmanaban* vs. *Matheri*. 11. T. L. R., 44.

Vide " BURDEN OF PROOF : MALABAR LAW." 7. T. L. R., 127.

Vide " BURDEN OF PROOF : AUCTION PURCHASER." 8. T. L. R., 125.

Vide BELOW CASES UNDER " LIABILITY OF TARAWAD PROPERTY."

5. DECREE AGAINST KARANAVEN OR OTHER MEMBERS OF TARAWAD—EFFECT OF.

1.—*Decree against Karanaven—Effect of—Limitation applicable to suit set aside a sale had in execution of decree.*

The question having arisen as to what is the period of limitation applicable to a suit for setting aside a sale by Court, it was held that where the Plaintiff was neither expressly nor constructively a party to such sale, the period was 12 years; but if he was a party directly or impliedly, it was only one year.

Held also that a decree against the Karanaven generally binds the other members of the Tarawad. *Velumben* vs. *Kunjen*. 4. T. L. R., 42.

2.—*Res-judicata. Decree against Karanaven of Marumakatayam Tarawad—Binding effect of, on members thereof.*

Held that a judgment passed in a suit to which the Karanaven of a Marumakkatayam Tarawad is a party, will bind all the other members thereof, though the latter may not be the parties in the record.

Held also that where the cause of action in a suit is substantially the same as in a previously decided case and the Karanaven of the Plaintiffs in the former was a party in the latter, to hold that the decree in the first case would not operate as *res-judicata* against the subsequent suit, would be a virtual repeal of the law of *res-judicata*. *Sankaran* vs. *Raman*. 8. T. L. R., 62.

3.—*Decree against mere manager of Tarawad. Res-judicata.*

Held, *inter alia* that a decree obtained against a mere manager of Malabar Tarawad who had not the full rights and privileges attaching to the position of a Karanaven and who is shown to have acted in breach of his duty, in a suit to which the Karanaven was not a formal party and had no opportunity of proving the claim of

his Tarawad, cannot operate as *res-judicata* against a subsequent suit based on the same claim and instituted by representatives of that Tarawad. *Pothen* vs. *Parameswaran*. 8. T. L. R., 33.

4.—*Decree against Karanaven. Force of.*

Held inter alia that the act of the Karanaven in the absence of fraud or collusion is the act of the whole Tarawad and that a judgment or decree passed in a suit brought by or against a Karanaven binds all his Seshakars and acts as *res-judicata*. (4 T. L. R., 42 followed). *Easwari* vs. *Junis Sett*. 9. T. L. R., 78.

5.—*Decree against Karanaven—Binding effect of, on Seshakar. Presumption of fraud.*

In the absence of positive proof of fraud and collusion, the Seshakars will be bound by a decree passed against their Karanaven. The mere fact, that a reconsideration of the genuineness of the debt-bond on which the decree was passed, would lead the courts to a conclusion different from the one already arrived at in the suit against the Karanaven, is insufficient to raise a presumption of fraud and collusion in obtaining that decree. *Narayanen* vs. *Raman*. 10. T. L. R., 46.

6.—*Decree against Karanaven on mortgage. Sale of property other than that mortgaged, in execution—Whether valid.*

Held that a decree passed on a mortgage, against the Kara. naven of a Marumakkatayam Tarawad personally and against the property mortgaged, may be executed against that property as well as any other property of the Tarawad, and that a sale of such other property under such decree is valid unless the decree is proved to have been fraudulently obtained. *Keshavan* vs. *Velayudan*. 10. T. L. R., 62.

7.—*Decree against Karanaven as Defendant—Effect of as res-judicata.* Vide "Res-judicata." 11. T. L. R., 112.

8.—*Deceased's estate—Decree against, for deceased's debt—Validity of, in spite of claim allowed—Hindu Law—Principles of, followed.*

A, the creditor of a deceased Marumakkatayi, obtained a decree against B, a party who had taken possession of the deceased's estate as his representative. C, as the rightful heir, recovered the estate from B, by means of a suit and opposes A's subsequent attachment of the deceased's estate by means of the present suit.

Held that a party who takes possession of the estate of a deceased Hindu must be treated for some purposes as his representa-

tive until some claimant comes forward ; and that, therefore, the decree obtained by A, against the deceased debtor's estate must be held valid, unless the debt itself is proved not genuine. *Thyagaraja Aiyan* vs. *Padmanaban.* 12. T. L. R., 136.

9.—*Karanaven's competency to hypothecate movables without consent of Seshakars—Res-judicata—Decree in suit by Karanaven—Lis Pendens—Whether applicable to suit for removal of Karanaven.*

Suit to set aside a hypothecation of an elephant by the Karanaven of a Tarawad and the decree obtained thereon, on the grounds that the hypothecation was bad for want of consideration and that the decree in question was obtained during pendency of a suit to remove the Karanaven from his office. The defence contends that the question of consideration is *res-judicata* by a decree in a suit brought by the Karanaven himself to set aside the hypothecation on the ground that it had no consideration.

Held that the suit by the Karanaven having been brought as Karanaven and dismissed on the merits, the decree therein operates as *res-judicata* on the question of consideration. The fact that if, instead of the Karanaven, his Anandravan (present plaintiff) had brought the suit, the *onus probandi* would have been on the creditor and not on the debtor (the Karanaven), could not deprive the decree of its legal validity and character.

Held also that the elephant being movable property, the Karanaven was competent to hypothecate it without the consent of his Seshakars.

Held further that the doctrine of *lis pendens* does not apply to suits for the removal of Karanavens. *Velayudan* vs. *Velayudan.* 12. T. L. R., 87.

10.—*Karanaven of Tarawad—Decree against—Effect of, as against Tarawad—Doctrine of Principal and Agent applied—Karanaven's omission to defend a former suit—Presumption of fraud—Continuing tort—Recurring cause of action.*

A continuing tort gives a fresh cause of action every time an injury is caused by it.

A person who, while acting as Karanaven of a Tarawad, causes injury to the property of others by an act which is within the scope of his powers or by an infringement of a duty cast on him by law, renders his Tarawad liable for such injury and to any decree based thereupon. The doctrine of principal and agent applies in such cases.

MALABAR LAW.—(*Continued*).

The Karanaven's omission to defend a suit based on a continuing tort after strenuously contesting more than one previous suit based on the same tort without success, cannot of itself be taken as a ground to assume fraud. *Krishnan* vs. *Ramakrishna Aiyar.* 12. T. L. R., 172.

6. Division.

1.—*Tarawad—Presumption as to non-division—Evidence.* Where property was separately enjoyed for nearly forty years, and the Defendants' management never questioned; where Defendant, paid the tax and had the registry in their name; where during all that period no admission of Plaintiff's right as co-parcener was ever made. *Held,* that, even without express proof of an actual division, the facts set forth showed a complete severance of interest, and that the Courts would not be justified in awarding recovery. 2. T. L. R., 33.

2.—*Compulsory partition.*

Held inter alia, that compulsory partition of joint or common property of a Marumakkatayam family cannot be allowed. *Narayanan* vs. *Nanjeli.* 5. T. L. R., 116.

7. Heir.

1.—*Escheat to Sirkar—Payment of Adiyera.* According to Marumakkatayam law, there are two classes of heirs. *First,* all those who are descendants in the female line from the great-great grand-mother downwards of a deceased person and between whom community of property exists, and who are termed Anandaravers or Seshakars. *Secondly,* those who claim from more remote female ascendants and who are known as Kuttukars or Dayadies.

The right of the Sirkar to take the property of a deceased person as an escheat, arises only on the total failure of both these classes of heirs. But under the customary law of Travancore, the Sirkar have, in the case of the succession of remote or second class heirs, on failure of first class heirs, a lien on the estate of the deceased, to the extent of enforcing payment of the usual Adiyera fees to the Crown. (Appeal Suits Nos. 131 and 186 of 1040 and Appeal Suit No. 353 of 1051 cited.) 2. T. L. R., 38.

8. Junior members. Right to sue.

1.—*Junior member—incompetency.* In a Marumakkatayam family the junior members of the Tarawad are not competent to deal with Tarawad property of their own right to the exclusion of the Karanaven. *Krishnan* vs. *Thommen.* 1. T. L. R., 63.

MALABAR LAW.—(*Continued*).

2.—*Right of Seshakar to sue in behalf of Tarawad.*

Held that a Seshakaran is not entitled to sue to recover rent due to the Tarawad during the life-time of the Karanaven. *Kothavarman* vs. *Avukan.* 3. T. L. R., 37.

3.—*Sale of Tarawad property for the debt of junior member—Incompetency of junior members to represent the Taravad.* A obtains a decree for money against B and in execution thereof, attaches and sells the Tarawad property of B purchasing the same himself. C and D, the junior members of the Tarawad, bring a suit to set aside the sale of the property and to declare the title of their Tarawad to the property, on the ground that the decree-debt being the personal debt of a junior member, cannot be a charge on the common property.

Held (following several reported decisions) that a Karanaven alone can sue or be sued on behalf of the Tarawad; that he alone is competent to represent the Tarawad; and that no junior member is competent to come forward as representative of the Tarawad. *Padmanaba Iyer* vs. *Shangaran.* 5. T. L. R., 19.

4.—*Junior member—Suit to set aside attachment of Tarawad property—Exemption of Karanaven from being impleaded.*

A, brings a suit to set aside an attachment made in execution of a decree against B, his late Karanaven, on the ground that the debt was not a charge on the Tarawad. C disputes the competency of A to sue since he is only a junior member of the Tarawad, and contends, further, that the suit is not maintainable as, in the execution proceedings, A acted as a representative of the judgment-debtor.

Held that the principle that an Anandaravan cannot sue without at least joining the Karanaven as a defendant, does not apply to this case inasmuch as C sought execution of the decree against A as a representative of the judgment-debtor and obtained an order to the effect that the debt was a charge on the Tarawad and that hence the suit is maintainable. *Keshaven* vs. *Kerulen.*

5. T. L. R., 36.

5.—*Bona fide purchaser in auction sale had in execution of decree against Karanaven. Informality in proceedings. Junior member's incompetency to sue as pauper on behalf of the Tarawad.*

Where a decree was passed in a suit to which the Karanaven and a junior member of the Tarawad were parties and the former died after decree and before execution, and the decree-holder

failed to bring in the next Karanaven on the record, and certain property has been eventually sold in execution without objection from any member of the Tarawad :

Held that the rights of a *bona fide* purchaser at such sale cannot, in the circumstances, be affected by the informalities in the execution proceedings.

Held also that a junior member of a Malabar family cannot be allowed to sue as a pauper on behalf of his Tarawad, the Tarawad itself not being insolvent, and that he cannot represent the family. *Velayudan* vs. *Krishna Aiyan.* 8. T. L. R., 108.

6.—*Junior member's right to sue.*

A junior member can sue to have an improper alienation of Tarawad property set aside. *Neelacandan* vs. *Mathoo.*

8. T. L. R., 71.

7.—*Junior member's competency to sue to cancel alienation of Tarawad property. Delegation of Karanaven's representative capacity. Creation of permanent charge on Tarawad property.*

A junior member of a Marumakkatayam family may sue to cancel an alienation of family property (provided he makes the Karanaven a party) when such alienation is alleged to have been made either by an incompetent party or to the prejudice of the common Tarawad.

Unless the Karanaven *de jure* who is capable of transacting business, is removed by a family arrangement or by a decree of court, he remains the Karanaven and cannot delegate his representative capacity.

A Karanaven cannot create a permanent charge on the family estate, save with the formalities necessary in the case of an absolute alienation of Tarawad property.

(*Semble*)—A written assent to an alienation of Tarawad property made by a Karanaven, could not be proved in evidence, unless it were registered. *Raman* vs. *Krishnan.* 8. T. L. R., 116.

8.—*Suit by junior member to cancel Court-sale of Tarawad property—Whether maintainable without the Karanaven as a party. Amendment of plaint in appeal. Power of Court to bring in new parties—Section* 530, *C. P. C. Addition of party as Respondent.*

In a suit by a junior member of a Marumakkatayam Tarawad to set aside a court-sale of Tarawad property held in execution of a decree passed against another junior member :

Held that the suit is not maintainable, as the Karanaven of the Tarawad is not a party to the suit :

MALABAR LAW.—(*Continued*).

That permission could not be granted in appeal to amend the plaint by bringing in the Karanaven as a party, as no amendment of a plaint could be allowed after the first hearing of a suit in the original court:

That the power conferred on courts to bring in additional parties, can be exercised only in favour of those who are not indispensable parties, but whose interests are likely to be affected by the result of the litigation:

And that Section 530 of the Civil Procedure Code does not empower appellate courts to make one who was no party to the original suit, a respondent in appeal. *Raman* vs. *Velayudan.*

11. T. L. R., 92.

9.—*Junior member's right to recover possession of Tarawad property alienated by Karanaven.*

Held by a FULL BENCH of the whole Court, overruling the current of decisions on the subject, that a junior member of a Marumakkatayam Tarawad may, in the interests of the Tarawad as a whole, recover Tarawad property improperly alienated by the Karanaven subject to the general right of the Karanaven to manage such property after its recovery. *Manni* vs. *Neelacandan.*

12. T. L. R., 211.

9. Liability of Tarawad Property.

1.—*Debt contracted by Karanaven—Admission—Liability of Tarawad property.*

A sued B, C and D for money due under bonds executed by B, the Karanaven of the other defendants. B admitted the claim but the other defendants pleaded want of consideration for the obligation and that the Tarawad was not liable for the debt. *Held* that the admission of B, was no evidence against the other defendants and that the Tarawad property cannot, in the absence of satisfactory proof of consideration, be made liable for the debts contracted by the Karanaven. *Narayana Aiyan* vs. *Keshaven.*

3. T. L. R., 45.

2.—*Liability of Tarawad to bear the cost of the defence of its members in criminal prosecutions. Liability of surety.*

In determining the questions (1) Whether a Malabar Tarawad is bound to bear the cost of the defence of its members in criminal prosecutions and (2) if so, under what circumstances and to what extent, it was.

Held that, in the absence of self-acquired funds, a member of a Tarawad is entitled to call upon the Tarawad to pay the reasonable expenses of his defence against false and groundless criminal prosecutions where the means of the family permit of such help being rendered, and that in the event of his succeeding subsequently, in an action for damages for malicious prosecution, the Tarawad may justly call upon him to recoup the amount spent by it for his defence in the criminal case; but that when the prosecution is the result of a crime committed by him, it may refuse to defend him at its cost, as public interests require that offenders against law should be punished and their defence, in such a case would be immoral.

Held also that if the member accused has self-acquired funds, the Tarawad may require him to look to those funds exclusively for his defence as he could not employ them better than in his own defence.

Held further that all the parties to the contract (in this case, with a Vakil to defend them in the Criminal Case) are equally liable, and the Tarawad has only to pay such proportion of the expenses as may fall to the share of its member; and that liability incurred as a surety does not bind the family. *Gopala Aiyan* vs. *Coonju*. 5. T. L. R., 128.

3.—*Liability of a Marumakkathayam Tarawad for debts incurred by the managing member thereof though he be Junior—Seniority of Karanaven.*

Held that the debt of a manager of a Marumakkathayam Tarawad incurred in the course of that management, for the benefit of the Tarawad, is binding on it, though that manager was only a junior member thereof.

Held also that mere seniority in age, without management of the Tarawad affairs, cannot make one a Karanaven with all the powers attaching to that position. *Chodalamoothu* vs. *Raman*. 6. T. L. R., 112.

4.—*Liability of Tarawad for debts contracted by Anandravers in management of Tarawad affairs.*

Held that if, under the terms of a family agreement, Anandravers manage the Tarawad for the Karanaven and contract debts for purposes of the Tarawad, such debts are a charge upon the Tarawad property; and that, in cases where the whole Tarawad assigns the management of its affairs to Seshakars, the managing Seshakars are virtually the Karanavers. *Maluku Mahomed* vs. *Mathevan*. 6. T. L. R., 115.

5.—*Liability of Tarawad property for the debt of managing Karanaven.*

Held that the dictum of the Zillah Judge, *viz.*, that a Karanaven's acquisition is to be presumed to be an acquisition on behalf of the Tarawad, is correct as a general proposition of law, the reason for the presumption being that a managing Karanaven is presumed to be in possession of common family funds out of which to make fresh acquisitions, and that such fresh acquisitions are, therefore, to be ordinarily taken as acquisitions on behalf of the Tarawad, but, where it is shown that such Karanaven is not the manager of the Tarawad and that his debt must, therefore, be treated as an individual debt realizable only from the debtor's assets, it would certainly be highly inequitable to treat him as managing Karanaven of the Tarawad, in so far as to convert his acquisitions into property belonging to the Tarawad, and to ignore his status altogether when the question of the liability for debts incurred by him is presented for determination. *Harihara Aiyan* vs. *Iyappen.* 6. T. L. R., 70.

6.—*Liability of Tarawad for decree against junior member. Limitation.*

Held that the decree obtained against the junior members of a Malabar Tarawad, does not operate as *res judicata* against the Tarawad, *i.e.*, against its other members.

Held also that the sale of Tarawad property held in execution of a decree against the junior members, cannot affect the interests of the Tarawad in that property.

Held further (Kunhiraman Nair, J., dissenting) that the limitation to set aside such a sale is not one year.

[*Per Kunhiraman Nair, J.*—In the circumstances of the particular case where a member of the Tarawad professedly acting as its representative was a party to the decree in execution of which the sale was held, the limitation for setting aside the Court-sale is *one* year.] *Raman* vs. *Krishnan.*

7. T. L. R., 137.

7.—*Karanaven's speculation in trade jointly with strangers—Presumption as to Tarawad's liability for partner's defaults.*

A, the Karanaven of a Marumakkathayam Tarawad, jointly with B, a stranger rented from the Sirkar (1st defendant) the abkari farm of one Taluq. The renters defaulted to pay the rent and the Sirkar summarily attached the property of A's Tarawad. The other members of the Tarawad sue to set aside the attachment.

Held that the presumption arising from the joint nature of the speculation is that it was not the concern of the Tarawad. The fact that A was senior member of his Tarawad, would not empower him to make the Tarawad responsible not only for his own incapacity and mismanagement but also for that of his partner, a stranger. *Sirkar* vs. *Kunjen.* 8. T. L. R., 72.

8.—*Liability of Tarawad for costs incurred in litigation.*

The liability of a Malabar Tarawad for costs incurred on account of litigation *bona-fide* carried on in its behalf by the Karanaven, does not depend for its determination upon the eventual result of such a litigation. *Kali* vs. *Govinden.*

8. T. L. R., 93.

9.—*Debt contracted by junior member while acting as Karanaven—Liability of Tarawad for.*

For recovery of a debt contracted by a junior member of a Marumakkathayam Tarawad, the creditor must look to that member alone; but the Tarawad would be *prima facie* liable for the debt if it was contracted by him (the junior member), while in charge of the Tarawad affairs, *i.e.*, as *de facto* Karanaven. *Padmanaban* vs. *Velayudan.* 9. T. L. R., 56.

10.—*Expenses of funeral incurred by junior member—Liability of head of family to pay. Marumakkathayam Tarawad.*

Where a junior member has defrayed the expenses of the funeral of a member of his family, he is, without a previous contract, entitled to be recouped for same by the Karanaven or head of the family. *Thanuvan* vs. *Raman.*

9. T. L. R., 126.

11.—*Deceased junior member—Personal assets and debts of—Duties and liabilities of Karanaven with respect to.*

Where in a suit for recovery of a debt of a junior member who left personal assets, the Karanaven pleaded that he had not taken possession of such assets and was, therefore, not liable to the claims:

Held that the Karanaven of a Tarawad is the legal representative of the deceased members of his Tarawad, in so far as their separate acquisition is concerned, and is bound by law to administer their estate and to recover it from those who may take illegal possession thereof. Where a junior member dies leaving personal debts and assets, the Karanaven cannot escape liability to the

former by pleading that he has not taken physical possession of the latter. *Thanuvan* vs. *Easwaran*. 12. T. L. R., 139.

10. Limitation of Powers of Karanaven or other member of Tarawad.

1.—*Curtailment of Karanaven's power by Courts—Remedy in case of neglect of duty by Karanaven.*

The courts cannot curtail the powers of a Karanaven, unless his conduct has been such as to render his dismissal from Karanavenship expedient.

A Karanaven is entitled to use his own discretion as to when and how to recover property belonging to the Tarawad outstanding in the hands of third parties, and cannot be compelled to redeem mortgages except in extreme cases.

If the Karanaven neglects his duties or acts fraudulently, the fact may give the Seshakars a cause of action for seeking his removal. *Karumpan* vs. *Kunjan*. 8. T. L. R., 120.

2.—*Seshakar's right to hold possession of Tarawad property.*

No Seshakars can hold any Tarawad property as against the Karanaven; nor will the mere fact that they have claims against him for maintenance, &c., entitle them to such possession. *Neelan* vs. *Padmanaban*. 9. T. L. R., 112.

11. Maintenance.

1.—*Maintenance*—

In a Marumakkattayam family, a woman living under the protection of her husband, and members not living in the family house are not entitled to maintenance from the Karanaven. *Kumaran* vs. *Lakshmi Pillai Tangachy*. 1. T. L. R., 55.

2.—*Award of maintenance out of family income.*

In a suit for maintenance, the Court could not according to Marumakkattayam law, make a division of family property but can only award maintenance out of the Tarawad income. *Kochu Pillai* vs. *Kumaran*. 1. T. L. R., 73.

3.—*Suit for—Small Cause.*

A suit for maintenance by members of a Malabar Tarawad, not based on any express contract, involves virtually a question of title to immovable property, and as such, is not a small cause suit within the meaning of Section 10 of Regulation I of 1057. *Kumaran* vs. *Velayudan*. 2. T. L. R., 31.

MALABAR LAW.—(*Continued*).

4.—*Maintenance—Female members choosing to live separate.*

Held that a female member of a Malabar Tarawad has simply the right to be maintained in the Tarawad house or in any other house set apart for the purpose and that where she chooses to live elsewhere, the Karanaven cannot be compelled to give separate maintenance. *Cochu* vs. *Kunjipillai.* 4. T. L. R., 25.

5.—*Maintenance to members of Tarawad.*

No separate maintenance to a member of a Marumakkatayam Tarawad can be allowed, when that member lives out of the Tarawad house, without justifying cause, such as misconduct or ill-treatment of the Karanaven, or inconvenience of all the members living together, in which case, there should be the consent of the Karanaven to the separate living.

The fact that the claimant for maintenance lives in a house belonging to the Tarawad, would not entitle him to separate maintenance, where the Karanaven is opposed to his separation from the rest of the family.

That the Karanaven is more affectionate or kind to one member than to another, is not at all a sufficient cause for the latter to leave the family house.

(*Semble.*)—That a member suing for maintenance is able to work and earn for his subsistence, is not a ground to disallow his claim. *Krishnan* vs. *Chappi.* 12. T. L. R., 51.

6.—*Property allotted for maintenance of branch Tarawad—Karanaven's right to resume, encumber and render liable to a decree.*

Where Tarawad properties are assigned to a branch for its maintenance and enjoyment under a family arrangement, such branch has a right to deal with the properties, and the common Karanaven has no right to resume the property without making other and suitable arrangements for the support of the branch. Such property is further not liable to be seized in execution of a decree against the common Karanaven, unless the original arrangement whereunder the allotment to the branch was made, has been superseded by a fresh family arrangement. *Easwaran* vs. *Sankaran.* 12. T. L. R., 133.

12. SELF-ACQUISITION.

1.—*Junior member—Self-acquisition—Presumption.*

Where a property stands in the name of a junior member of a Tarawad, who was not in management at the time of acquisition, without further evidence as to how it has been acquired or possess-

ed, it must be presumed that such property is the self-acquisition of the said junior member. *Sankaran* vs. *Cheria.* 2. T. L. R., 2.

2.—*Assignment of Decree to Anandraven--His special rights thereunder over Tarawad Property.*

Held that the Marumakkathayam Law, as administered here, enables an Anandraven to acquire, by assignment, special rights over Tarawad property and that hence the assignee, who is the Anandraven of the judgment-debtor, is entitled to represent the judgment-creditor. *Parwathi Pillai* vs. *Ramakrishnan.*

7. T. L. R., App. 46.

3.—*Acquisition of individual members—Reversion of, to Tarawad. Separation of branches.*

Though the severity of the rule that the acquisitions of individual members of a Tarawad are, in the eye of the law, the acquisitions of the Tarawad, has been relaxed in so far as to enable the acquirer to enjoy, during his life-time, the fruits of his own labour, the rule that such acquisitions revert to the Tarawad as a whole, and fall, as all other Tarawad property does, to the management of the eldest surviving male, is still considered the law of the country and must be enforced by the courts.

Where there are two separate houses bearing the original Tarawad name, with separate properties attached to each, and there is no reliable evidence of the two houses having at any time within fifty years before suit, lived under one head, or managed their properties under the direction and superintendence of a common Karanaven, there is the strongest possible ground for concluding that separation of interests has taken place. *Kunju* vs. *Govinden.* 9. T. L. R., 42.

4.—*Acquisition of junior member. Reversion of.*

Where the junior member of a Marumakkathayam Tarawad acquires property, he has the right to dispose of it as he pleases during his life-time. But on his death, the property goes to the Tarawad to be there managed by the eldest competent male member, and not to his (acquirer's) nephews or other nearer relatives. *Krishnan* vs. *Aiyappen.* 9. T. L. R., 70.

5.—*Property acquired by Tarawad but standing in junior member's name. Separate possession and adverse possession of Tarawad property by junior member.*

The ruling of the FULL BENCH, that property standing in the name of a junior member, should be presumed to be his self-

acquisition, does not apply to property which having been acquired by the Tarawad, stands registered in the name of the junior member.

The separate possession of Tarawad property by a junior member, is only permissive; and it is only where he expressly and openly denied the Tarawad's title and, after such denial, was allowed to hold exclusive possession of the property for more than 12 years, that he could claim title by adverse possession. *Krishnan* vs. *Narayanen.* 9. T. L. R., 172.

6.—*Presumption as to acquisition by woman—Management of property so acquired. Gift property—Acknowledgment in respect of.*

Held that under the Marumakkatayam law, the acquisitions of a woman, in the absence of evidence to the contrary, are to be presumed to have been made out of funds supplied by her husband for the benefit of his wife and children; that the wife and children of a Marumakkatayam Hindu who assigns property or funds for investment for the ulterior benefit of the former, must, to all intents and purposes, be regarded as a Tarawad *quoad* such property or funds; and that the male members of such sub-Tarawad are competent to execute an acknowledgment of a mortgage in respect of such property. *Valliamma Pillai* vs. *Raman and others.*

10. T. L. R., 136.

MALICE.

SEE CASES UNDER "DAMAGES-TORTS."

MALICE IN LAW.

Held that malice in law is the doing of a wrongful act intentionally, without just cause or excuse, and is to be presumed where the words said to be libellous are found to be untrue and their publication not justified. *Swaminatha Pillai* vs. *Vencatagiri Shastrial.* 12. T. L. R., 72.

MALICIOUS PROSECUTION.

1.—*Action for—Liability of Judge—Prosecution for contempt of court—Cause of action.*

This is an action for damages for malicious prosecution against a Judge and his two subordinates. The 1st defendant in his capacity of the 1st Judge of the Trivandram Zillah Court issued a warrant for the arrest of the judgment-debtor. The warrant was entrusted to 3rd defendant (peon) who arrested the debtor on the

road. Plaintiff interfered and had the debtor released without the order of the 1st defendant. The 1st defendant examined the peon (3rd defendant) who stated that on the arrest of the debtor the plaintiff assaulted him and took hold of the hand of the debtor and led him off to the 2nd Judge of that court and obtained an order of discharge from that court. On the strength of this statement the 1st defandant ordered a prosecution of the plaintiff for the contempt of his authority. The magistrate who tried the case acquitted the plaintiff. The plaintiff alleging that 1st defendant was actuated by malice in ordering the criminal prosecution instituted the present suit. *Held* that a Judge is not liable for damages for acts done by him within his jurisdiction, although he might have been actuated in what he did by unworthy motives and malice. *Vencata Ramiengar* vs. *Ragunatha Row*. 4. T. L. R., 26.

2.—*Suit for, based on Criminal prosecution.*

Held that in order to sustain an action for malicious prosecution, five factors must co-exist, *viz.* (1) a prosecution of the plaintiff by defendant; (2) want of reasonable and probable cause for the prosecution; (3) malice, express or implied; (4) the determination of the prosecution in favour of the party prosecuted; and (5) loss or damage caused to that party by the prosecution. If any of these factors is absent, the action must fail.

Held also that in considering whether there was reasonable and probable cause, the court has to enquire (1) whether the complainant took reasonable care to inform himself of the true facts; (2) whether he honestly, although erroneously, believed in the information he received; and (3) whether that information, if true, would have afforded *a prima facie* case for the prosecution. *Vencataranga Row* vs. *Alagammal*. 12. T. L. R., 196.

3.—*Suit for, based on malicious Criminal prosecution—Burden of proof—Grounds of action.*

The failure to substantiate a criminal charge, would not, by itself, render the accuser liable to a civil action for malicious prosecution. To support such an action, proof of malice alone is insufficient; and the accuser will be liable only where plaintiff proves malice combined with want of probable and reasonable cause for the charge. *Sambhu Empran* vs. *Easwaran Empran*. 12. T. L. R., 42.

MARRIAGE.

SEE HINDU LAW—MARRIAGE.

Matrimonial Suit—Protestants—Nullity of Marriage—Jurisdiction.—Misrepresentation and Fraud—Principal and Agent—Limitation—Delay and Negligence—Evidence—Medical Opinion.

The plaintiff, a member of the Church of England, sued for a decree annulling his marriage with the 1st defendant, on the ground that he was induced to marry the said defendant, who was insane, by the misrepresentation and fraud of the 2nd defendant, the plaintiff's uncle.

Held (1) that marriage between persons professing the religion of the parties was essentially a civil contract and the courts of Travancore had jurisdiction to try suits relating to the validity of such marriages :

(2) that a contract of marriage was unlike other contracts, and the courts should be guided by the Canon Law and the principles laid down by the English Courts, not based on Statutory Law which was not in force in the State, in adjudicating on it :

(3) that the plaintiff must show that the fraud practised on him deprived him of the power of exercising his free will :

(4) that there was no authority for holding that the misrepresentation or fraud of an agent would bind the principal in a marriage contract :

Held also (*a*) that Article 78 of the Limitation Regulation was governed by Section 18 of the Regulation, and the plaintiff should shew that he was, by means of fraud, kept from learning of the deception practised on him :

(*b*) that a delay of nine years in seeking relief would be sufficient to bar a suit of this nature on equitable grounds :

(*c*) that the written opinions of medical gentlemen given or statements submitted to them by the plaintiff were inadmissible as evidence against the defendants. *Poonnen* vs. *Maria.*

10. T. L. R., 95.

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MEELA PATTOM.

—Conditional—Sirkar Pattom lands—Nature of Conveyance.

The question is whether the stipulation in a Kadamuri document, which provides for the enjoyment by the obligees, of the property therein referred to, on Meela Pattom or irredeemable tenure in the event of default being made in the payment of interest in kind on the money borrowed on the security of the said property, is to be

MEELA PATTOM.—(*Concluded*).

viewed as a mere penalty not enforcible by the courts. *Held* that such contracts are enforcible by the courts and that there is no rule of law to prevent the courts from giving effect to it according to the intent and meaning of the parties clearly expressed by its language, and further that such contracts were recognized and enforced by the ancient Hindu Law. *Held also*—That holders of Sirkar Pattom lands had simply a right of occupancy and that a conveyance of such lands under a Meela Pattom tenure is equivalent to an absolute transfer of such rights. *Alakiathiruchithambalam* vs. *Vadivaluku*. 3. T. L. R., 1.

MERGER.

1.—*Equity of redemption—Decree enforcing right to redeem.*

Held that a decree enforcing the right to redeem mortgaged property could not operate to merge the equity of redemption in in the decree. *Mathu* vs. *Kochakko*. 5. T. L. R., 6.

2.—*Document.*

Held that no invalid document can supersede a prior valid document, and hence there can be no merger in such a case. *Govindan* vs. *Krishnan*. 9. T. L. R., 177.

3.—*Surpercession of valid contract by an invalid contract. Mortgagee's acceptance of interest due on mortgage-debt, from third party—Effect of.*

Parties to an existing contract may rescind or alter it by the substitution of another, but that which is substituted must itself be one which is capable of enforcement.

The acceptance of interest due on a mortgage-debt, by the mortgagee, from third parties, cannot have the effect of extinguishing the mortgage-debt. *Nethran Namburipad* vs. *Venkatachalam Aiyan*. 10. T. L. R., 79.

MESNE PROFITS.

1.—The question of mesne profits may be left for settlement in execution when the suit is for land and profits, but not when the suit is for mesne profits alone in the shape of damages. *Paramaswaram* vs. *Narayanan*. 3. T. L. R., 41.

2.—*Award of in excess of the plaint amount.*

As an exception to the general rule that a plaintiff cannot recover more than what he claims in the plaint, a plaintiff is entitled to recover the ascertained amount of mesne profits, although it may exceed the amount stated in the plaint. 9. T. L. R., App. 12.

MESNE PROFITS.—(*Concluded*).

SEE ALSO CASE UNDER C. P. C. SECS. 213 & 214. 9. T. L. R., 46.

SEE ALSO RES JUDICATA. 6. T. L. R., 121.

MICHAVAROM.

—SEE CASES UNDER "JENMI AND KUDYAN"—RIGHTS OF JENMI AND KUDYAN.

1.—*Minor—Age of majority.*

Held inter alia that the age of majority as fixed by the common law of Travancore is 16 years. *Powlo* vs. *Thoma.*

8. L. L. R., 22.

2.—*Competency to contract—Age of majority.*

Held that, though the Limitation Regulation of the State fixes 18 as the age of majority and the Court has ruled that that provision of the Limitation Regulation applies also to proceedings under the Code of Civil Procedure, under the substantive law of the State, a person who has attained the age of 16 years is competent to enter into contracts. *Venkatachalem* vs. *Rama Shenoi.*

11. T. L. R., 175.

3.—*Explanation of the term as used in Chapter XXX of the Civil Procedure Regulation—Appeal.*

Held by a FULL BENCH that a minor under Chapter XXX of the Civil Procedure Regulation, is a person who has not completed the age of 18 years, as defined in the Limitation Regulation (II of 1062).

Held also, that the restriction as to the incompetency of minors to institute or defend any 'suit' except through their next friend or guardian, applies also to appeals. *Nangali* vs. *Aiyappen.*

11. T. L. R., 11.

SEE LIMITATION. Sec. 7. 9. T. L. R., 185.

——————— Sec. 8. 12. T. L. R., 149.

SEE DECLARATORY DECREE, SUIT FOR. 9. T. L. R., 160.

MONEY.

—*Not specific trust property.*

A raised a loan by hypothecating a piece of property to B and C, the manager of a matom. A died subsequently. B then sued A's brother for recovery of money by sale of the said property and the other assets of the deceased debtor. The defendant's

MONEY.—(*Concluded*).

chief plea was limitation. The Zillah Court overruled it and gave a decree for the plaintiff holding that as the money was but out of the funds of a matom it was "specific trust property" under Section 3 of Regulation 3 of 1040.

Held on appeal that money is not "specific trust property" and that this being a suit not against trustees or their representatives, but a suit by a trustee to recover money it is subject to the ordinary law of limitation. *Koottiavupokker* vs. *Veeramani Aiyan.* 4. T. L. R., 35.

MORTGAGE.

1. Form of Mortgage.
2. Mortgagor and Mortgagee.
3. Nature of Mortgage.
4. Possession under Mortgage.
5. Redemption.
6. Sale of Mortgaged property.

1. From of Mortgage.

1.—*For a term of years—Effect.*

A, who took a mortgage from B for 12 years, sought to cancel the same and to recover the mortgage amount before the end of the term. *Held* that the mortgage being for a term of years; the provision must bind both parties, and that the assumption of a portion of the property by the Sirkar for public purposes does not terminate the mortgage, but only gives him the right to claim compensation. *Krishnan* vs. *Neelacantan.* 1. T. L. R., 71.

2.—*Usufructuary—Award of value of improvements.*

A tenant holding property under a usufructuary mortgage is, even without any express agreement, entitled before ouster to be compensated for any permanent improvement that he may have made upon the land. *Syed Mahomed* vs. *Alyarkunju.* 3. T. L. R., 23.

3.—*Equitable mortgage by deposit of title deeds—Judgment-creditor and Judgment debtor—Registration compulsory in the case of immovable property.*

A obtains a sale of certain properties from B. In execution of a decree obtained by C against B, the said properties are attached. A seeks to set aside the attachment on the ground that he has become the absolute owner of the said properties under the sale

deed duly obtained by him from B. C impeaches the sale as fraudulent and pleads an equitable mortgage in his favor by deposit of the title deeds of the properties prior to the date of the sale to A. *Held* that the procedure to be followed by a Judgment-creditor to realize the debts due to his Judgment-debtor is prescribed in Sections 220, 225 and 249 of the Civil Procedure Code and is quite different from that laid down for the attachment and sale of immovable property.

That a mortgage by the deposit of title deeds is an implied contract of mortgage.

That under the Statute Law of this State, even an express oral contract of mortgage (which is certainly superior to an implied contract) cannot effect the rights acquired under a duly registered document.

That *a fortiori*, an implied contract of mortgage relating to real property can confer no rights as against the registered vendee of the property.

That all documents relating to immovable property being compulsorily registerable in this country, the legislature of this State has virtually abolished equitable mortgage by the deposit of title deeds. *Srinivasan* vs. *Variyathu*.

6. T. L. R., 119.

2. Mortgagor and Mortgagee.

1.—*Mortgagee's liability for damages on injury to mortgaged property —Covenant for compensation.*

Held that a mortgagee, in the absence of special contract for repairs, is liable for damages to the mortgagor only on account of negligence on his part in keeping the premises mortgaged, or for actual injury done to it.

Held also that a clause in the mortgage deed providing for compensation to the mortgagee for repairs that may be executed by him to the mortgaged property, will not amount to a covenant making it compulsory on the mortgagee to maintain the property in thorough repair. *Gosam Veevee* vs. *Oomargee*. 7. T. L. R., 149.

2.—*Acceptance by mortgagee of interest due on mortgage-debt, from third party—Effect of.*

Held that parties to an existing contract may rescind or alter it by the substitute of another, but that which is substituted must itself be one which is capable of enforcement. The acceptance of interest due on a mortgage-debt by the

mortgagee from third parties, cannot have the effect of extinguishing the mortgage-debt. *Nethran Namburipad* vs. *Venkatachalem Aiyan.* 10. T. L. R., 79.

3.—*Competency of co-mortgagee to sue for recovery of debt.*

Held that one of several mortgagees can maintain an action for recovery of the debt-making the others co-defendants, if they are unwilling to be joined as plaintiffs or if they have done some act precluding them from being plaintiffs.

Held further that the discharge by one of several persons jointly entitled to a mortgage-debt is not binding against his coparceners without whose authority, express or implied the discharge was granted. *Asanisa* vs. *Ninan Thampi.* 10. T. L. R., 198.

4.—*Mortgagee—Personal remedy against Mortgagor—Limitation—Extension of limitation by possession.*

Held that under Art. 109 of the Limitation Regulation, a mortgagee's remedy against the debtor personally extends to 12 years from the date the debt sued on was payable and is not restricted to 6 years.

Held also that where a holder of a mortgagee was in possession of the land mortgaged, the period of limitation may, by the provisions of Section 20 of the Limitation Regulation, be computed from the date such possession terminated. *Aiyappen* vs. *Karthyayani.* 11. T. L. R., 74.

5.—*Recovery of Stamp duty and penalty paid on mortgage-deed—Limitation.*

Held that a mortgagee is entitled to recover from the mortgagor the stamp duty and penalty levied from him on the title deeds delivered to him by the mortgagor.

Held further that the mortgagee's claim to the refund of the money would not be barred by lapse of three years from the date of the payment, but that he may wait for recovery of the amount till the redemption of the mortgage is sought for and the delivery back of the title-deeds is compelled—*i. e.*, he may recover the money with the mortgage-debt. *Keshavan* vs. *Sankaran.*
11. T. L. R., 181.

6.—*Mortgagor and Mortgagee. Set off of arrears of rent—Interest on arrears of rent.*

Held that in the case of a mortgage providing for payment of Michavarom annually, the mortgagor is entitled under the law of

MORTGAGE.—(*Continued*).

mortgage to set off the arrears of Michavarom due to him up to the date of redemption, against the mortgage debt due by him to the mortgagee.

Held also that it is as much the duty of the landlord to demand rent as that of the tenant to offer pay. The law requires the debtor to seek out the creditor to pay the debt.

Held further that interest is awardable on arrears of rent. *Mathan* vs. *Govindan.* 11. T. L. R., 215.

3. NATURE OF MORTGAGE-LIEN.

1.—*Mortgage-lien of Judgment-debtor—Movable or Immovable property.*

A judgment-debtor's mortgage-lien secured by document, should, for the purposes of attachment and sale in execution of the decree against him, be regarded as immovable property, and the provisions of the Civil Procedure Regulation relative to attachment and sale of such properties should be strictly followed in bringing such lien to sale. 8. T. L. R., App. 54.

2.—*Mortgage-lien—Immovable property—Attachment and sale of as movable property—Effect of.*

Held that a mortgage-lien is immovable property.

Held further (applying the ruling in A. S. No. 194 of 1063 published at T. L. R., p. 81) that an attachment and sale of a mortgage-lien as movable property, would confer no valid title on the auction-purchaser thereof. *Sankaranarayana Aiyar* vs. *Narayanan.* 11. T. L. R., 202.

4. POSSESSION UNDER MORTGAGE.

1.—*Registered mortgage and oral mortgage with possession—Superiority of title—Registration Regulation I of 1042—Section 30—Oral mortgage—Validity of as against mortgagor—Registration Law—Scope of.*

Held (*Kunhiraman Nair, J., dissenting*) that, as the law stands in Travancore, the fact that an oral agreement or declaration is followed by possession of immovable property, has not the effect of giving valid title to such property to the possessor, as against the subsequent holder of a registered document in respect of the same property.

Held also that an oral mortgage is valid as between the parties thereto, since there is no law in Travancore which requires mortgages to be in writing.

Held further that the law (Registration) applies only to contracts reduced to writing and determines the legal weight to be

MORTGAGE.—(*Continued*).

attached to registered written contracts as against oral or unregistered written contracts. *Vergese* vs. *Chakko.*

12. T. L. R., 54.

2.—*Suit for redemption or foreclosure of—Decree—Execution of—Sale of property—Disturbance of possession—Omission to implead party—Burden of proof—Vacation of Courts—Plaints—Computation period.*

Held that any person in possession of mortgaged property, under whatever title derived after the mortgage, is a necessary party to a suit for redemption, or for foreclosure, or for recovery of mortgage money by sale of such property; and that a decree obtained without him as a party thereto, could not be executed against the property to the prejudice of that person's interest or to the disturbance of his possession.

Held also that the omission to implead a party in the suit could not destroy the mortgage or do away with it, all that the law requires in such a case being that the decree-holder should prove the mortgage over again against the person in possession who should be given an opportunity to contest the mortgage. *Anna* vs. *Padmanaba Kymal.* 12. T. L. R., 205.

5. REDEMPTION.

1.—*Partial redemption.*

It is an undisputed proposition of law that a mortgagor cannot enforce a partial redemption of a mortgaged property on paying a portion of the mortgage amount. *Narayanan* vs. *Krishnan.*

1. T. L. R., 66.

2.—*Redemption of partially.*

The law allows partial redemption of a mortgage where the mortgagee acquires any part of the mortgagor's interest, provided that all the heirs of the mortgagor are made parties to the suit for redemption. *Mahammathu* vs. *Mahammathu.* 8. T. L. R., 86.

—SEE CASES UNDER "AUCTION PURCHASER." 12. T. L. R., 111.

6. SALE OF MORTGAGED PROPERTY. 12. T. L. R., 141.

1.—*Mortgage property—Effect of sale of by mortgagor. Cancelment of sale at minor's suit. Limitation. Age of majority.*

When a sale of mortgaged property is effected between the mortgagor or his legal representative and the mortgagee, cancelling the mortgage deed, the latter becomes the legal and equitable owner of that property from the date of the sale; and his title

MORTGAGE.—(*Concluded*).

would begin to run from that date against the vendor and his representatives as one in adverse possession.

A suit by a minor to cancel a sale should be brought within three years after attaining majority. *Powlo* vs. *Thoma.*

8. T. L. R., 22.

2.—*Sale at suit of prior mortgagee—Absence of notice—Subsequent mortgagee's right of redemption from purchaser.*

Where a prior mortgagee brings the mortgaged properties to sale in a suit to which a subsequent mortgagee is not made a party, and where the latter has no knowledge of either the suit or sale, his (the latter's) right to redeem from the purchaser at the sale, will not be effected by the decree or the sale. *Krishnan* vs. *Govindar.* 12. T. L. R., 141.

NAMBURIS.

Vide "Malabar Brahmins."

NANJANAD VELLALA—*Right to Ukanthudamai.*

SEE "UKANTHUDAMAI." 4. T. L. R., 64

NEIGHBOURS—*Examination of—on behalf of accuseds.*

In warrant cases in which the accused state in their depositions before the magistrate, that people who live in the neighbourhood of the scene of offence should be examined, the magistrate shall require the accused to name them.

If the witnesses are named, the magistrate shall summon them, subject to the provision of Sec. 359 Cr. P. C. (old). If they are not summoned the reason must be recorded.

If the accused do not name their witnesses among the neighbours when required, they will not be entitled to have any of the neighbours examined ; but it will be at the discretion of the magistrate to examine them or not.

The fact that the accused were called upon to name their witnesses should appear on the record. *Criminal Circular, No. 8 of* 1061. 4. T. L. R., App. 11.

NIRTHAL LANDS.

Held that nirthal lands or lands abandoned by the original holders as unfit for cultivation and allowed to lie waste, are, in this state, treated as Sirkar land and dealt with by them as other lands are, in which the proprietory right is vested in them ; *i e.,* the

moment the act of abandonment on the part of the original proprietor takes place, the land changes its original tenure and becomes, for the purposes of assessment of Revenue, what is called Sirkar land.

Held further that there is nothing in the Proclamation of 5th Magaram 1057 relating to nirthal lands to indicate that the term "full assessment" was therein used to denote the original assessment entered in the Ayacut accounts. *Chithambarathanoo* vs. *Sirkar*. 8. T. L. R., 26.

OATH.

1.—*Agreement for—effect.* When once the parties to a suit enter into a formal agreement to have the matter in dispute among them settled by oath, they are precluded from re-opening the matter, unless they can show that the agreement was the result of fraud, undue influence, or generally of something which would render the agreement voidable, but the court may for valid reason set aside such agreement. *Venkitanarayanan* vs. *Vasudevan Namburi*. 1. T. L. R., 110.

2.—*Agreement for—Withdrawal.*

Plaintiff and defendant voluntarily entered into an agreement, through court to settle their case by the oath of the former; but subsequently, the defendant applied to the court for permission to withdraw from the said agreement. *Held*, that the defendant cannot be allowed to do so, without the consent of the plaintiff, the rule of law being, that a party who wants to disaffirm a contract entered into by mistake, cannot be allowed to do so unless both parties can be replaced in their original position. *Mathan* vs. *Mathu*. 2. T. L. R., 20.

3.—*Form of administering.*

In administering oaths, Hindu witnesses should be sworn on the Ramayanam, Mahomedans on the Koran and Christians on the Bible. Where a witness professes no religious belief and satisfies the court that his objection to being sworn is founded on conscientious scruples, such witness may be solemnly affirmed. *Subramania Pillai* vs. *Sanku Aiyan*. 8. T. L. R., 42.

4.—*Administration of—3rd class Magistrates.*

Held that 3rd class Magistrates have the power to administer oaths in cases tried before them. *Criminal Circular, No.* 9 *of* 1057. 1. T. L. R., 38.

OATH.—(*Concluded*).

5.—*Commissioner in Departmental enquiry—Power of, to administer oath.*

Held, inter alia, that there is no law authorizing commissioners appointed to hold departmental enquiries, to administer oaths. *Sirkar* vs. *Padmanaba Pillai.* 11. T. L. R., 52.

OFFENCE—*Conviction for minor offence on a charge of graver one.*

See "Cr. P. C. Sec. 215." 9. T. L. R., 123.

OFFENCES UNDER PENAL CODE. See "Penal Code."

OFFENCES UNDER OTHER REGULATIONS. See "Regulations."

OFFICE—*Change of—Liability of surety.* See "Security." 4. T. L. R., 30.

—*Of Ashan—Claim to perquisites proclaimed illegal—Damages.* See "Damages—Torts." 4. T. L. R., 70.

—*Of Purohit.* See "Jurisdiction of civil courts." 4. T. L. R., 37.

—*Rights to.* See "Jurisdiction of civil courts." 3. T. L. R., 56.

ORDERS.

—*Copying of, in the original application.* When miscellaneous petitions are disposed of by orders not recorded on them but recorded in a separate book, such orders must be copied on the original petitions, in order that the Appellate Court might be in a position to know how the petitions were disposed of. *Civil Circular* 12 *of* 1061. 4. T. L. R., App. 26.

ORDER RETURNING PLAINT. See "C. P. C. Sec. 2." 5. T. L. R., App. 11.

ORDER ALLOWING OR DISALLOWING ASSIGNMENT OF DECREE.

See "Decree—assignment of decree." 9. T. L. R., 209.

ORDER DISMISSING APPLICATION OF REPRESENTATIVE TO BE JOINED AS PARTY. See "Appeal." 9. T. L. R., App. 44.

ORDERS ON CLAIM PETITION.

—See "Estoppel." 9. T. L. R., 201.

—See "Execution of decree—Powers of court executing decree." 10. T. L. R., 64.

ORDERS.—(*Concluded*).

—See "*Res-Judicata*—ADJUDICATIONS."

10. T. L. R., 37.

ORDER REFUSING TO ADD PARTY OR TO TRANSFER DEFENDANT TO ARRAY OF PLAINTIFFS.

See "C. P. C. Secs. 28 and 557." 9. T. L. R., App. 46.

ORDER REJECTING APPLICATION FOR EXECUTION.

See "Execution of Decrees—general cases."

9. T. L. R., 113.

ORDER REJECTING CLAIM FOR DISTRIBUTION OF ASSETS REALIZED IN EXECUTION OF DECREE.

See "Civil Pro. Code. Secs. 292 and 557.

9. T. L. R., App. 45.

ORDER REFUSING TO GRANT INTERIM INJUNCTION. See "C. P. C. Secs. 471 and 557." 10. T. L. R., App. 6.

ORDER AS BETWEEN RIVAL DECREE-HOLDERS.

See "C. P. C. Secs. 320 and 321." 11. T. L. R., 161.

ORDER PASSED IN EXECUTION MAKING A REPRESENTATIVE LIABLE TO A PERSONAL DECREE.

See "C. P. C. Secs. 2, 227 and 238". 11. T. L. R., 4.

ORDER REJECTING AN APPLICATION FOR SETTING ASIDE AN EXPARTE ORDER.

See "C. P. C. Sec. 557." 11. T. L. R., 143.

ORDER DIRECTING PAYMENT OF VALUE OF IMMOVABLE PROPERTY REMOVED DURING PENDENCY OF CLAIM ENQUIRY.

See "C. P. C. Sec. 324." 12. T. L. R., 27.

ORDERS—*appealable*.

See "C. P. C. Sec. 557."

(7) OTTI AND KULIKKANOM MORTGAGE.

See "Malabar Law—Mortgage".

See also "Mortgage."

PANCHAYET.

Vide "CRIMINAL PROCEDURE CODE, SECS. 118 AND 121."

6. T. L. R., App. 11.

PANDAROMS.

—*Illegitimate son—inheritance.*

No special custom has been proved to exist among the Pandarom caste people, whereby an illegitimate son inherits wholly or in part his father's estate. *Ananjuperumal* vs. *Nullavadivoo.*

8. T. L. R., 172.

PARTITION.

—*Decree for. See "Decree—assignment of."* 12. T. L. R., 182.

PARTITION DEED.

—*Whether compulsorily registrable—admissibility in evidence though unregistered.*

Vide "EVIDENCE IN CIVIL CASES." 11. T. L. R., 172.

PARTNERS.

—*Suit by one of several. Specific arrangement—Binding effect on one not a party thereto.*

Held that a firm of partners can only sue in the names of the individual members and that the fact that the deed of partnership contains an arrangement whereby one partner could sue on behalf of the others, cannot affect one who was no party to it. *Subramania Pillai* vs. *Sanku Aiyan.* 8. T. L. R., 42.

PARTNERSHIP.

See "Civil Procedure Code, Secs. 22, 209 & 210."

11. T. L. R., 48.

PARTY.

—See cases under Civil Procedure Code Secs. 22 to 31.

—*Alienation of property, by party, pending litigation—Abatement of his interest in the suit.*

An alienation of property which is the subject matter of a pending litigation, by a party thereto, will not disentitle him to continue as party in the suit and carry on proceedings. *Narayanan* vs. *Raman.* 10. T. L. R., 46.

PATHIVU OR PATTYAM OR PATTAH.

Pathivus or Pattyams issued by the Sirkar under legal sanction, being public documents, must be presumed to be genuine. *Kochika* vs. *Krishnan.* 8. T. L. R., 174.

PATTAH.

1.—*Cancelment of. Scope of Boundary Regulation III of* 1058.

The Boundary Regulation applies only to suits relating to boundary disputes between adjoining landholders and not to suits

raising questions of title between rival claimants to the land the subject of the claim. *Nangali* vs. *Kunjane and Sirkar.*

8. T. L. R., 99.

2.—*Suit for cancelment of declaration—Sirkar not a party—Effect of Pattah to create title—Limitation.*

[S. A. No. 40 of 1065—IX, T. L. R., 33—distinguished].

Suit for declaration of plaintiff's title to property in the possession of mortgagees and in respect to which defendant is alleged to have fraudulently obtained a pattah in his name. The plaint incidentally prays also for cancelment of the pattah, but the Sirkar is not made a party to the suit. The contention having been raised that the suit is not maintainable and that it is barred having been brought one year after the date of the issue of the pattah :

Held, distinguishing the ruling in S. A. No. 40 of 1065 reported at IX, T. L. R., p. 33, that the property being in the possession of mortgagees and the pattah in defendant's name and possession, the plaintiff's action is maintainable.

Held also that a pattah granted by the Settlement Department creates no new title ; that its cancellation is not absolutely necessary for the declaration sought for ; and that the Sirkar not being a party to the suit, the prayer for cancelment of the pattah cannot be granted so as to bind the Sirkar.

Held further that the limitation of one year does not apply to suits for cancelment of revenue proceedings by persons who were no parties, directly or indirectly, to such proceedings. *Salia Sherif Sahib* vs. *Mahomed Husain Sahib.* 12. L. T. R., 113.

See also " Limitation Art. 10." 11. T. L. R., 70. and 2. T. L. R., 118.

PATTOM.

—*Meela Pattom.* " *See Meela Pattom.*"

—*Assessment of—Valuation of trees—Sirkar tax.*

See " Improvements." 10. T. L. R., 7.

PAUPER SUITS.

1.—*Admission and disposal of.*

See Civil Circular No. 3 of 1058. 2. T. L. R., App. 7.

2.—*Government's right to recover fees from unsuccessful defendant.*

Held, that under Sec. 293 of the old C. P. C., Government has the power to recover institution fees, in a pauper suit from the unsuccessful defendant, independently of the plaintiff ; but a subsequent

reversal of the original decree, on appeal, makes the Government liable to refund the fees so recovered. 5. T. L. R., App. 12.

PENAL CODE.

SECS. 71, 352 & 426.

—*Assault and mischief—Separate Sentences necessary.*

Assault and mischief are distinct offences, and separate sentences should be passed where an accused is convicted of both offences. 10. T. L. R., App. 37.

SEC. 147.

—*Proof of common object—Wrongful restraint—Public street—Right of thoroughfare.*

The complainant (a salvationist) and his followers (Pariah converts), in passing through a street and certain paddy lands, are alleged to have been obstructed and assaulted by accused who were, consequently, charged with and convicted of rioting, wrongful restraint, and assault.

Held that to sustain a conviction for rioting under Sec. 147 of the Penal Code, it must be proved that the alleged rioters had a common object in assembling and that violence was used in furtherance of that object.

Held also, that a path may be a public street and yet not open to all classes of people to pass through ; and that, therefore, the conviction for wrongful restraint cannot stand in the absence of a distinct finding that the street was one open to the class of people to which the complainant and his followers belonged.

10. T. L. R., App. 31.

SEC. 159.

—*Affray.*

Held that to constitute the offence of affray there must be fighting, *i. e.*, giving a stroke or offering to give one. In other words, use of, or threat to use, physical force of some kind, is essential to bring the offence under Sec. 159. 7. T. L. R., App. 44.

SECS. 166 & 341.

—*Search of a woman by Police officer.*

Held that a police officer in searching the person of a woman for the purpose of discovering symptoms of child-birth acted contrary to law and disobeyed the directions of the Criminal Procedure Code in not calling respectable neighbours to be present at the search, and in being, contrary to the habits and

customs, personally present when the woman was stripped of her clothes and that therefore he was rightly convicted under Sec. 166.

Sec. 170.

—*Personating a public servant.*

To sustain a conviction under Sec. 170 of the Penal Code, it should be shown that not only the accused personated a public servant, but that, in such capacity, he did some act which the official personated alone could do. 9. T. L. R., App. 6.

Secs. 173 & 174.

1.—*Refusal to obey Revenue summons.* Mere refusal to sign or receive the summons would not constitute an offence under Sec. 174, if the prisoner, nevertheless, did obey the summons. From the prisoner's statement, we uuderstand that he neglected to obey the summons, and on this ground the conviction under Sec. 174 ought to be upheld. 1. T. L. R., App. 5.

2.—*Refusal to sign, and non-attendance in obedience to summons.*

Where a person refused to sign a summons and also failed to attend in obedience thereto :

Held that the refusal to sign a summons does not constitute the offence of intentionally preventing the service of a summons under Sec. 173, but non-attendance in obedience to the summons would be punishable under Section 174.

9. T. L. R., App. 31

Sec. 174.

1.—*Applicability of, to defendants also. See Criminal Circular No.* 16 *of* 1061.

4. T. L. R., App. 15.

2.—*Disobedience to summons issued by Deputy Tahsildar. Section* 1 *of Regulation V of* 1063.

Since the passing of Regulation V of 1063, disobedience to summons issued by Deputy Tahsildar cannot be treated as an offence under Section 174 of the Penal Code, the Deputy Tahsildar not being empowered to do so under Section 1 of that Regulation

The object of a public notification is that the public may know whose summons they are, by law, required to obey. A communication from the Dewan to the officer concerned cannot obviously serve the purposes of a public notification.

8. T. L. R., App. 22.

PENAL CODE.—(*Continued*)

3.—*Disobedience of summons issued by a Puthuval Samprathy.*

The Puthuval Samprathy sent a summons for the appearance of the accused to take a statement regarding the Puthuval registered in the name of the latter. Accused is punished with having disobeyed such a summons and fined three Rupees; in default commutable to 9 days' rigorous imprisonment.

Held that if the conviction was under the first part of Section 174 the imprisonment in default of payment of fine could not exceed one-fourth of the maximum term of one month provided for the offence. The period of imprisonment will, therefore, be reduced to 7 days.

Held also that Puthuval Samprathy's office is not a court of justice and the offence does not, therefore, fall under the latter part of Section 174. The Magistrate should have clearly stated under what part of Section 174, the conviction was entered.

8. T. L. R., App. 71.

4.—*Revenue officer's authority to issue summons. Notification in the Gazette.*

Notification in the *Gazette* is legally necessary to empower a Revenue officer of Samprathy's grade to issue process. Disobedience to summons issued by such Revenue officers, is, in the absence of such notification, not punishable under the Penal Code.

9. T. L. R., App. 19.

5.—*Magistrate's competency to try offence under Sec. 174 committed in contempt of his own authority.*

See Criminal Procedure Code, Sec. 365.

10. T. L. R., App. 43.

6.—*Statement of a party in a deposition binding himself to appear before court—Effect of.*

A complainant in a criminal case made a statement in his deposition that he would appear with his witnesses on a certain date, but failed to appear at the hour specified. The Magistrate thereon charged and convicted the person under Sec. 174 of the Penal Code.

Held that the conviction is illegal, as the statement in the deposition can hardly be called a notice, order, summons or proclamation *proceeding from public servant,* within the meaning of Section 174 of the Penal Code. 10. T. L. R., App. 46.

PENAL CODE.—(*Continued.*)

SEC. 188.

1.—*Criminal Procedure Code (old), Secs.* 518 and 521.

There is nothing in the wording of Section 188, to restrict its operation to cases of disobedience to orders made by Magistrates under Secs. 518 and 521 of the old Procedure Code. I. T. L. R., App. 3.

2.—*Disobedience of orders passed in a Civil Suit.*

Disobedience of orders, passed in a Civil Suit, for delivery of property, does not fall under Section 188 of the Penal Code.

[The case of Chandra Kanta VI. I. L. R. Cal., page 445, cited and followed.] 3. T. L. R., App. 33.

3.—The District Magistrate issued an order to the accused directing him to chop off, within 3 days from the receipt of the order, certain branches of a Jack tree standing in his garden and reported to be a source of danger to one of his neighbours, or to appear before the Magistrate and show cause why the order should not have been forced. The accused neither shewed cause nor obeyed the order. He was convicted under Section 188 and sentenced to pay a fine of four Rupees.

Held that the overhanging of the branches of a tree on another compound is only a private nuisance, and that it is only in cases falling under Section 521 of the Criminal Procedure Code (old) and where immediate action is necessary, that the District Magistrate can act under Section 518 of the old Code; and that orders of a permanent character can be passed only under Section 521 where the word "remove" occurs. The order, therefore, issued under Section 518 of the Criminal Procedure Code (old) is *ultra vires.* 7. T. L. R., App. 4.

SECS. 193 & 467.

——An unjel delivery peon was charged with having misappropriated a registered unjel letter which was entrusted to him for delivery to the addressee, and having produced two receipts—found to be fabricated ones—to evidence delivery of the letter.

Held that the prisoner is guilty of the offence punishable under Section 11 of the Unjel Regulation (I of 1064), that the prisoner's contention that the said Regulation does not prescribe the period within which registered letters should be delivered, and, therefore, the mere delay in the delivery of the letter does not constitute an offence under the Regulation, deserves no consideration in the case, as the letter was misappropriated and not at all delivered to the addressee. That the prisoner cannot be convicted

under Section 193 of the Penal Code, as there is no evidence to show that the receipts were fabricated for the purpose of using as evidence in any proceeding " taken by law before a public servant" and that the fabrication of the receipts amounts to forgery under Section 467 of the Penal Code. *Sirkar* vs. *Velayudhan.*

10. T. L. R., 144.

SECS. 193, 210 & 511.

A decree-holder whose decree was partly satisfied out of Court, sued out execution of the full amount due under the decree, without intimating to Court the fact of the partial satisfaction. The Sessions Judge before whom the case was committed, convicted the decree-holder (accused) under Section 193 of the Penal Code. In appeal, the question having been raised that the decree-holder was not bound to mention the partial payment in his application for execution.

Held that Sec. 255 C. P. C. renders it obligatory on a decree-holder to certify to Court payments made to him out of Court under the decree.

Held also that payments made out of Court in satisfaction of a decree, but not certified to Court, may be recognised by a Criminal Court for the purposes of a prosecution under Sec. 210 of the Penal Code.

Held further that the appropriate Sections under which the prisoner should have been convicted are Secs. 210 and 511 of the Penal Code, though his offence falls under Sec. 193 also. *Sirkar* vs. *Mathai.* 11. T. L. R., 46.

SECS. 206 & 380.

—Building under attachment of civil court—Sale and removal of—whether theft or fraudulent removal of property to prevent seizure in execution of a decree.

Where the owners and possessors (1st and 2nd accused) of a building attached by a civil court by a prohibitory order, in satisfaction of a Judgment-debt due by them, sold the building to a third party (3rd accused) who dismantled the same and removed the materials.

Held that the essential ingredients of the offence of theft are wanting in the case, but that the acts of the accused amount to the offence under Section 206 of the Penal Code. 11. T. L. R., App. 7.

SECS. 213 & 214.

The subject of compoundable offences dwelt upon. 1. T. L. R., 42.

SEC. 224.

Escape from police custody while under arrest for offence committed in another State.

Escaping from police custody while under arrest for an offence committed in another State, will constitute the offence under Section 224 of the Penal Code. For conviction in such a case, it is not necessary that the offence the accused was primarily charged with should be one triable by the Courts in this State. 9. T. L. R., App. 8.

SEC. 225 B.

Resistance or obstruction to legal apprehension. Conviction under Section 225 *B—illegality of.*

Held that a conviction under Sec. 225 B was illegal as the Section was introduced into the Penal Code only by Act X of 1886, and did not exist in the Code which was introduced as law in Travancore by Regulation II of 1056. 11. T. L. R., App. 15.

SEC. 228.

—Offence under—Cr. P. C. Sec. 360*—Interruption to Judicial proceedings—Witness refusing to give direct answers to questions.*

Where a person is charged with an offence under Section 228 of the Penal Code, the Court should, under Section 360 of the Criminal Procedure Code, record the facts constituting the insult or interruption offered; and for a conviction under the Section, there must be a finding that the accused's act was *intentional.* The refusal or neglect to give direct answers to questions put to a witness, unless done intentionally, is not punishable under Sec. 228 of the Penal Code. 12. T. L. R., App. 1.

SECS. 239 & 240.

—Chuckrams. Counterfeiting of.

Where the prisoner has been charged with, and convicted of, an offence under Sec. 239 of the Indian Penal Code for having delivered false chuckrams.

Held that the chuckrams being a counterfeit of His Highness the Maha Rajah's coin, the offence properly falls under Sec. 240 rather than under Sec. 239 of the Penal Code.

Held further that the evidence of an expert should have been taken to prove the chuckrams produced in Court were false and counterfeit. *Sankaran* vs. *Sirkar.* 12. T. L. R., App. 26.

SEC. 242.

Possession of a number of counterfeit coins—Presumption.

PENAL CODE.—(*Continued*).

Held that the discharge of a person found in possession of a number of such coins on the ground that no guilty knowledge or intent has been proved against the prisoner is improper.

Held also that such possession *prima facie* raises presumption of guilty knowledge and it is for the defence to rebut such presumption by admissible proofs. 2. T. L. R., App. 17.

SEC. 243.

—Queen's coin—Interpretation of the expression in the Penal Code. Dishonest possession of counterfeit chuckrams.

The expression "Queen's coin" in Sec. 230 of the Travancore Penal Code means coin issued by or under the authority of His Highness the Maha Rajah of Travancore. The dishonest possession of counterfeit chuckrams falls under Section 243.

8. T. L. R., App. 25.

SEC. 269.

—Contagious disease—Carrying a man suffering from a contagious disease from house to house—Jurisdiction.

The accused took a man suffering from small-pox to the houses in a certain village demanding that the inmates should either pay something or take care of the patient.

Held that the alleged act of the accused, if proved, amounts to an offence under Sec. 269 of the Penal Code and is not triable by the 3rd-class Magistrate. The Sub-Magistrate's conviction under Sec. 290 and the sentence are, therefore, set aside, and a trial by a competent court ordered. 10. T. L. R., App. 26.

SEC. 283.

—Obstruction to public road.

Where the accused, the owner of a private building adjoining a public road, added a verandah to the building, which extended over a portion of the road;

Held that the accused, by putting up the verandah, has caused obstruction to the public way, and his act was one punishable under Sec. 283 of the Penal Code. *Sirkar* vs. *Narayana Bhattar*.

12. T. L. R., 64.

SECS. 283 & 341.

—Partial obstruction to public way. Where a person erected a fence which ran into and narrowed a public path, but did not wholly prevent the passage of persons along the path, and was charged and convicted therefor under Sec. 341 of the Penal Code.

PENAL CODE— (*Continued.*)

Held that the Section applicable was 283 under which any act causing danger, obstruction, or injury to any person in any public way, falls. An act which renders a public way less commodious to the public, would, therefore, be punishable under Sec. 283, and not under Sec. 341. The conviction is affirmed, but under Sec. 283.

9. T. L. R., App. 32.

SECS. 283 & 426.

—*Storing of earth on public road Mischief—Actual obstruction whether necessary for an offence under Sec.* 283.

Where accused stored up earth on a public road, encroaching thereby on a portion thereof, but without in any manner affecting its structure.

Held that the accused's act did not constitute mischief (Sec. 426), but amounted to a public nuisance falling under Sec. 283 of the Penal Code. Actual obstruction to any particular individual is not necessary to constitute an offence of public nuisance.

12. T. L. R., App. 6.

SEC. 285.

—A was employed to set fire to a nest of wasps on a rafter in an unoccupied house. He did so in obedience to the orders of the owner of the house. But by accident the fire caught the thatched roof and destroyed it. The 3rd-class Magistrate convicted the prisoner (A.) of the offence of dealing with fire, in a rash or negligent manner so as to endanger human life.

Held that this is not a case of dealing with fire in a rash and negligent manner so as to endanger human life, and that, hence, A committed no offence. 6. T. L. R., App. 7.

SEC. 289.

—*Negligence to take due care of animal. Proof of, necessary for conviction.*

The charge was that through accused's negligence, his horse ran into a public road and caused inconvenience and annoyance to the passers-by. The 2nd-class Magistrate of Trivandram convicted the accused under Sec. 289 of the Penal Code.

Held that, in the absence of evidence to show that the horse was a vicious animal or that the accused neglected to take ordinary precaution to prevent the animal from escaping, the conviction under Sec. 289 of the Penal Code is bad in law.

10. T. L. R., App. 25.

PENAL CODE.— (*Continued*).

SECS. 289 & 324.

—Inciting an animal to cause injury to a man—whether punishable under Section 289 or Section 324.

Where an animal is incited to cause, and does, under the influence of such incitement, cause bodily pain or injury to another, the offence falls under Section 324 of the Penal Code. Section 289 applies to cases where an animal of a vicious character causes injury to another owing to the owner's negligence to take proper care of it. 11. T. L. R., App. 18.

SEC. 294.

—Singing an obscene song. Frame of charge.

The accused in this case had been charged under Section 294 of the Penal Code, with singing an obscene song, and convicted.

Held that a conviction on a charge of having sung an obscene song, under this Section, could not stand unless the song alleged to have been sung, was set out in the charge. 9. T. L. R., App. 17.

SEC. 304 A.

—The accused was charged before the 1st-class Magistrate with having beaten a female who had a child in her arms, causing her to fall and injure the child to such an extent that it died shortly afterwards. The Magistrate tried the accused under Section 304 A. of the Penal Code, and disbelieving the evidence for the prosecution, acquitted the accused under Section 220 of the old Cr. P. C.

Held that the Magistrate misunderstood the law in trying the accused under Section 304 A.

When a person does an act adverting to consequences which, upon insufficient grounds, he expects not to follow, he is said to be rash, and his conduct is called *rashness*.

When a person does an act without adverting to the consequences, and he has failed to do so because he has not exercised due care and circumspection, he is said to be negligent, and his conduct is called *negligence*. The party who is guilty of *rashness* does an act, and breaks a negative duty, that is, by doing an act from which he was bound to forbear. He *thinks* of the probable mischief that would follow his act, but, in consequence of the mis-supposition begotten by insufficient advertence, he assumes that the mischief will not be done.

PENAL CODE.—(*Continued*).

But neither of these terms is applicable to a case of personal violence voluntarily caused, though the act may result in consequences beyond the immediate purpose of the party committing it.

Held also that in rash and negligent acts punishable under the Code, the acts themselves are not offences, but become so by their being done so as to cause danger to others.

Held further that it would be a safe rule for the magistracy in all cases where death results, directly or indirectly, from personal violence and where the evidence is not manifestly false, to commit the accused for trial to a superior court. 5. T. L. R., App. 4.

SECTIONS 320 and 325.

—Where none of the specific injuries mentioned in Section 320 is alleged, it will be necessary in order to support a conviction under Section 325 to show that the person injured was during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits. *Sankaran* vs. *Sirkar*. 1. T. L. R., 82.

SECTION 324.

—*Held* that the offence of causing hurt under this Section is not compoundable as the law now stands though the new Criminal Procedure Code makes it compoundable. 8. T. L. R., App. 82.

SECTION 339.

1.—*Wrongful Restraint.*

The questions having arisen as to whether the offence committed by the accused who, without good faith, locks a room to prevent the person entitled to go into it, from going into it, is wrongful restraint as defined in Section 339 or mischief as defined in Section 425; and whether it is necessary to constitute the offence of wrongful restraint that the person against whom it is committed must be present at the scene of the offence :

Held by the majority of the FULL BENCH that the act of the accused amounts to wrongful restraint; and that it is not necessary that the person "obstructed" should be present when the act causing the obstruction is actually committed.

7. T. L. R., App. 7.

2.— *Wrongful restraint.*

Held that closing the gates of a Mosque, a place of common worship, for keeping out some of the persons having a right of entry, amounts to committing the offence of wrongful restraint, and that it is not necessary that the obstruction should be caused while the persons are about to enter. 7. T. L. R., App. 25.

PENAL CODE.—(*Continued*).

SECTIONS 342 and 343.

—Computation of a day under Section 343—

Wrongful confinement for 2 days and a fraction of a day—Offence under Section 342 Penal Code.

Held that the word "day" in Section 343 of the Penal Code must be taken to be the time covered by 24 hours; and where a person is wrongfully confined for less than 3 days at the above rate, the offence falls under Section 342. 12. T. L. R., App. 12.

SECTION 347. *Wrongful confinement—Public Servant.*

—The accused in this case are said to have prevented the complainant, one of the Yogakars of the pagoda, from returning to his house until he *assented* to the assumption by certain restored servants, of the charge of their offices. The Magistrate dismissed the complaint.

Held that persons employed in Sri Padmanabhaswami's temple are public servants, and that no such officer can, in virtue of his office, legally confine any person, especially a person in the official position of the complainant (one of the Yogakars of the pagoda) for refusing to do what such person is not bound to do.

The Magistrate's order is set aside and the case will be proceeded with in due course of law. 8. T. L. R., App. 69.

SECTION 353.

Resistance to Impressment.

Resistance offered by a person against being forced to carry loads against his will, is no offence. 7. T. L. R., App. 74.

SECTION 361.

1.—*Kidnapping—Detention of a child contrary to guardian's wish where the custody commenced with latter's assent—whether a criminal act. Removal necessary to constitute kidnapping.*

Held that "detention" is not equivalent to "taking or enticing" under Sec. 361 of the Penal Code; that for an act to amount to "kidnapping" under that Section, there should be a *removal* of minor from the custody of his or her guardian; and that where the accused's custody of a child alleged to have been kidnapped by him commenced with the assent of its lawful guardian the continuance of such custody against the latter's wish, would not constitute a criminal act. 11. T. L. R., App. 14.

2.—*Guardianship.*

The prisoners were convicted of the offence of abducting a

widow of 18 years old under Section 366 of the Penal Code and sentenced to long terms of rigorous imprisonment.

Held that the Sessions Judge was wrong in considering the widow as a woman under the guardianship of her relations. The principles of Hindu Law are not applicable to criminal cases which are governed by the statutory law—Penal Code. The Code does not recognise a female over 16 years of age, to be under the guardianship of any person. 6. T. L. R., App. 6.

SECTION 378.

—*Removal of Crops under distraint.*

Held unanimously by a FULL BENCH that if the owner of crops which had been distrained by the revenue authorities for arrears of revenue, but which was, notwithstanding the distraint allowed to remain in his possession on the strength of his agreement to consult the revenue Authorities and pay them their dues or share at the time of harvest, removes the crops subsequently without the permission of the authorities, he cannot be indicted for theft.

8. T. L. R., App. 1.

SECTION 379.

1.—*Theft—Wrongful attachment by Court—Effect of.*

Held that for a conviction under Section 379 the element of dishonesty, that is, causing wrongful gain to one or wrongful loss to another, is essential.

Held further by a majority that where an Amin of a Court wrongfully attaches property not belonging to the debtor, he has no right to hold it as against the true owner and the latter's removal thereof does not constitute theft, there being no dishonest intention in so doing. *Sirkar* vs. *Kunhen*. 4. T. L. R., 86.

2.—*Theft of crop.*

There cannot be a conviction under this Section unless the subject of the theft is in the possession of a person other than the thief. 2. T. L. R., App. 15.

SECTION 380.

1.—*Theft in a canoe.*

A canoe used for conveying goods from one place to another is a vessel used for custody of property and theft committed in it falls under Section 380 and not under Section 379.

8. T. L. R., App. 70.

2.—*Absence of dishonest intention. Effect of.*

In the absence of dishonest intention, that is, intention to

cause wrongful loss to complainant or wrongful gain to accused, the removal or taking away of property from another's possession does not amount to the offence of theft. 12. T. L. R., App. 11.

3.—SECTIONS 380 *and* 381. *Jurisdiction of 3rd class Magistrate to try offence under Section* 381—*Sentence under Section* 381. *Retrial in cases of conviction—Expediency of ordering.*

The accused, two subordinates of a Bharippukaran, were convicted under Section 380 of the Penal Code, for theft of a small quantity of ghee entrusted to them by the latter for use in the discharge of their duties. The Sessions Judge before whom the calendar in the case went up, referred the case for the High Court's orders, being of opinion that the conviction in the case should have been under Sec. 381 (theft by a servant), that imprisonment should have formed part of the sentence and that the case was not cognizable by a 3rd class Magistrate.

Held that, as pointed out by the Sessions Judge, the conviction in the case should have been under Sec. 381 of the Penal Code; imprisonment should form part of the substantive sentence under Sec. 381 ; and the 3rd class Magistrate had no jurisdiction to try the case.

Held also that as the irregular and illegal procedure in the case has not prejudiced the accused, nor affected the interests of public justice, it is inexpedient to direct a retrial for the graver offence under Sec. 381, quashing the conviction for the minor offence under S. 380. 12. T. L. R., App. 21.

4.—SECTIONS 380, 395, *and* 447—*Investigation of offences under these Sections—Declarations regarding the right of any party to possession.*

In investigating charges under any of the three Sections above named, Magistrates have only to decide whether the accused persons wrongfully deprived complainants of possession of their property, and if that fact is not proved, they have simply to dismiss the complaint. Declarations as to possession can be made by first class Magistrates only under the provisions of chapter 40 of the old Criminal Procedure Code. In this case, the Magistrate was of opinion that the evidence did not support the charge of trespass. Nevertheless, he went out of his way in adding a declaration that the complainant should remain in possession of the property in dispute. This declaration is quite unauthorized and uncalled for, and we accordingly set it aside. 1. T. L. R., App. 7.

5.—SECTIONS 380 *and* 428—*Theft and killing of.*

Where the accused stole and killed a certain number of sheep, and the question was raised whether the accused should have been convicted under Section 380 or 428 of the Penal Code:

Held that where property stolen is destroyed, the offence committed is theft, and, therefore, the conviction for theft, the graver offence, under Section 380 is right. The Magistrate should have charged the accused under Section 428 also and, in passing sentence, taken into consideration the fact that the animals stolen were rendered irrecoverable by the complainant, by the accused's killing them. 10. T. L. R., App. 50.

6.—SECTIONS 380, 428 *and* 429. *Theft in a building and mischief by killing a cow. Separate conviction under Secs.* 380 *and* 429 *on trial held by 3rd class Magistrate—Whether illegality of trial under one Section vitiates the trial under the other. Section* 212 *of the Criminal Procedure Code. Mischief and theft combined. Mischief how to be treated. Disposal of stolen property.*

In a case where the accused were convicted by a District Magistrate under Secs. 380 and 429 of the Penal Code for stealing and killing a cow, on a reference for enhanced punishment made by a 3rd class Magistrate who tried the case under Sections 380 and 428, and the sessions Judge reversed the conviction under both counts, on the ground that the accused had not been charged with, nor tried by the 3rd class Magistrate for, the offence under Section 429, which offence moreover was not cognizable by that Magistrate.

Held that the Sessions Judge's reversal of the conviction under Section 380 is wrong, as there was no illegality in the proceedings that led to that conviction.

That under Sec. 212 of the Cr. P. C., the trial in one case for two separate offences forming parts of the same transaction, is not obligatory. That theft in the case was complete before the mischief was committed, and was therefore a distinct offence from the mischief. That the conviction under Section 429 on a trial held by a 3rd class Magistrate, is illegal. That the subsequent killing of the cow after its theft amounted to disposal of stolen property and cannot be said to be a distinct and separate offence calling for a separate sentence, though it should be treated as an aggravation of the theft and receive consideration in awarding punishment for that offence (*viz.*, theft). 11. T. L. R., App. 3.

PENAL CODE.—(*Continued*).

7.—SECTIONS 380 & 451. *Theft and trespass in a cattle-shed—Offences under.*

Held that cattle-shed being a building for the custody of property within the meaning of Section 380, the conviction for theft should have been under Section 380 and not under Section 379. As the prisoner has been convicted under Section 429, the major offence, the conviction under Section 428 is not called for. The conviction for trespass should have been for house trespass under Section 451 as cattleshed is a place for the custody of property within the meaning of Section 442 and as the trespass was committed in order to commit theft.

12. T. L. R., App. 25.

8.—SECTIONS 380, 426 & 429—*Theft and mischief. Killing of cow—Whether an offence under Section 426 or Section 429. Jurisdiction of 3rd class Magistrate to try offence under Section 429. Theft of and mischief with respect to an animal. Separate convictions and sentences for.*

Held that killing of a cow is an offence under Section 429, and not one punishable under Section 426.

Held also that a 3rd class Magistrate has no jurisdiction to try a charge under Section 429 Penal Code.

Held further that where there is theft of a cow and mischief also committed in respect of the same cow by the same accused, separate convictions may be entered, but separate sentences should not be passed for the two offences, *i. e.*, in passing sentence, the offence of mischief should be regarded only as an aggravation of the main offence, theft. 11. T. L R., App., 16.

9.—SECTIONS 380 *and* 453. *Theft and Lurking house-trespass—Servant's right of entry. Theft of articles in servant's custody. Confession before committing Magistrate certified as voluntarily made. Sale of property entrusted for making an ornament—Criminal misappropriation—Stolen property—Abetment in selling. Property in respect of which no offence was committed—Disposal of.*

Held that a servant's right of entry into a place where his master's valuables are secured can be exercised only for lawful purposes.

That the possession of a servant is the possession of the master, only until the former commits an offence respecting the property in his possession.

That, therefore, where the offences of lurking house-trespass and theft are committed by a servant, the fact that he had the right of entry into the place where the property stolen was secured,

and was in possession of the property, would make no difference in the nature of the offences.

Held also that the confession of a prisoner recorded by the committing Magistrate does not become inadmissible in evidence by the Magistrate's certifying that he believed that the confession was voluntarily made.

Held further that the sale of property by a person to whom it was entrusted for making an ornament is an act of criminal misappropriation.

That property in respect of which the offence of criminal misappropriation is committed, falls under the definition of stolen property.

That, therefore, whoever with guilty knowledge assists in the disposal of property in respect of which the offence of criminal misappropriation has been committed, assists in the disposal of stolen property.

Held further that the Sessions Court's order dispossessing prisoners of property in respect of which no offence was committed, is illegal. *Sirkar* vs *Keshavan.* 10. T. L. R., 141.

SECTION 381.

—*Imprisonment and fine.*

The imposition of fine under this section is as an additional and not as an alternative punishment. 1. T. L. R., App. 3.

SECTION 392.

—*Nature of imprisonment for offence under.*

See "Sentence. Imprisonment." 10. T. L. R., App. 41.

SECTION 403.

—*Detention of cattle by a private pound-keeper. Criminal misappropriation under Sec.* 403.

The detention of cattle by a private pound-keeper, even after tender of the feeding expenses by the owner, amounts to criminal misappropriation under Sec. 403 of the Penal Code. That the detention of the cattle was not for a long time, would not affect the nature of the offence. 9. T. L. R., App., 14.

SECTIONS 406 and 408.

—*Conviction for the offences under, in the same case.*

Held that where a conviction is entered under Sec. 408 of the Penal Code for criminal breach of trust by a servant, a separate

conviction for simple breach of trust under Sec. 406 is superfluous.
11. T. L. R., 57.

SECTION 417.

—Cheating—not compoundable.

The accused charged with the offence of cheating under Sec. 417 were discharged by the Magistrate under Sec. 215 of the old Cr. P. C., on the ground that the complainant declined to prosecute them and that such an offence is compoundable under Sec. 345 of the new Cr. P. C. Bill.

Held that cheating is not a compoundable offence (Madras High Court Proceedings, dated 29th October 1875) and that the absence of the complainant alone is no sufficient ground for a discharge; but the discharge will be legal *if there is no other evidence* sufficient to substantiate the charge. (Sec. 215, Explanation I—Act X of 1872). I. T. L. R., App. 6.

SECTIONS 419 and 465.

—Cheating and forgery—Appeal, jurisdiction.

The prisoners were first charged with, and convicted of, cheating under Sec. 419 I. P. C. The High Court, on revision, found that the offence committed was not cheating, but forgery and directed a commitment on that charge to the Sessions Court. The Sessions Court found one of the prisoners guilty of forgery. On appeal, it was contended that the High Court could not hear the appeal, as it had already recorded the opinion that the prisoner's offence amounted to forgery and not to cheating, and that the couviction for forgery could not be sustained as nobody was defrauded by the prisoner's act.

Held that the expression of opinion as to the offence being forgery by the High Court, in its exercise of the powers of revision, does not debar the Court from hearing the appeal; and that as the prisoner's act in signing the prosecution 1st witness' name to the mortgage deed executed by her in favour of the 2nd accused in the case, was manifestly to commit fraud, it falls within the definition of forgery.

Held also that the charge and conviction should have been under Section 467, the document forged being a valuable security, and not simply under Section 465 of the Penal Code..

8. T. L. R., App. 44.

SECTION 419.

—Cheating by false personation, Attempt,—Abetment of.

The 1st prisoner in the sessions case (acquitted) got a mortgage

deed of certain property belonging to one Devayani (deceased), forged. One Chempakakutti was made to affix her signature to the deed as the executant (Devayani). They took the document to the Registrar and falsely represented to the Registrar that Chempakakutti was Devayani, the executant. The document was not registered as the Registrar suspected the identity of the woman.

Held, on the above facts, that a false representation made to a Registrar of Assurances, of the identity of a particular individual, in view to get him (the Registrar) to register a document, is tantamount to false personation within the meaning of Sec. 419 of the Penal Code, inasmuch as the Registrar, by registering the document, lays himself open to the suspicion of collusion with the party interested in the Registration thereof, and that suspicion must harm him in mind and reputation. (VI. M. H. C. R., App. 12 followed.) *Sircar* vs. *Chempakakutti.*

9. T. L. R., 37.

SECTION 426.

1.—*Mischief. Destruction and conversion of a Sircar Boundary wall.*

The accused, a house-owner, obtained the permission of the P. W. D., to pull down certain portions of the Boundary wall of a public road, put up by the Sircar for a public purpose, but actually removed a greater length of the wall and erected a building in its place, causing withal the disappearance of the materials of the wall destroyed.

Held that the accused's acts supply all the ingredients necessary for a conviction under Sec. 426 of the Penal Code. *Sircar* vs. *Neelacandan.* 11. T. L. R., 30.

2.—*Mischief by cattle—Absence of intention to cause damage.*

Held that to hold a person criminally liable under Sec. 426, for damage caused by his cattle, there must be evidence to show that the damage was intended, or known by him to be likely to be caused by the cattle. Their straying by accident or negligence into another's garden will not render the owner liable for criminal mischief. 11. T. L. R., App. 21.

3.—*Obstruction to public road by storing of earth—whether mischief.*

Held that, where accused stored up earth on a public road, encroaching thereby on a portion thereof, but without in any manner affecting its structure, the accused's act did not constitute

mischief (Sec. 426) but amounted to a public nuisance under Sec. 283. 12. T. L. R., App. 6.

SECTIONS 426 & 427.

—Illegality of separate sentences for, when forming parts of one transaction.

When trespass and mischief are committed at one and the same time and form parts of one transaction, the award of separate sentences for the respective offences is illegal.

9. T. L. R., App. 13.

SECTIONS 426 & 429. *Killing of cow. Theft in respect of the same.*

Held that killing of a cow is an offence under Section 429 of the Penal Code and not one punishable under Section 426.

Held also that where there is theft of a cow and mischief also committed in respect of the same cow by the same accused, separate convictions may be entered, but separate sentences should not be passed for the two offences ; *i.e.*, in passing sentence, the offence of mischief should be regarded only as an aggravation of the main offence, *viz.*, theft. 11. T. L. R., App. 16.

SEE ALSO CASE UNDER " SECS. 380, 426 & 429."

11. T. L. R., App. 3.

SECTION 430.

—*Mischief—Obstruction to water-supply—Essentials of offence.*

Held that to constitute the offence of mischief under this section, actual diminution of the supply of water is not necessary, the likelihood of the diminution of such water being itself sufficient.

12. T. L. R., App. 36.

SECTIONS 436 & 109.

—*Mischief by fire and abetment thereof.*

A and B conspire with C and D to destroy a house by fire. With this common object in view, they proceed in a body to that house. A actually sets the fire, while B, C and D keep looking on. The house is thus destroyed and their common object is attained.

Held that, according to law, B, C and D are equally guilty with A of the principal offence, *viz.*, mischief by fire to destroy a house, and that the guilt of the one is not a whit more or less than that of the others. 6. T. L. R., App. 5.

PENAL CODE.—(*Continued*).

SECTION 447.

1.—*Criminal trespass during pendency of a charge of criminal trespass.*

Held that, in the eye of the law, the real possessor of property is the person who had its peaceful possession before forcible dispossession; and that remaining in unlawful possession has the same effect as unlawful entry.

Held, therefore, that a party who, during pendency of a charge of criminal trespass on immoveable property, enters upon the same property and continues in possession even after conviction is entered on the charge, is liable to a charge of criminal trespass, even though his possession may have commenced with the permission of the accused in the first case. 12. T. L. R., App. 8.

2.—*Trespass.*

Held that a Magistrate has simply to find who is in possession and not to enter into questions of title.

Held also that the existence of a *bona-fide* claim of right very often excludes the presumption of any criminal intent, but it does not follow that it always does so. 7. T. L. R., App. 27.

3.—*Trespass.*

The accused was charged under Section 447 for depositing manure in land which was delivered in execution of the decree to the complainant. The Magistrate, who tried the case, finds that the property was delivered to the complainant, but acquits the prisoner on the grounds that (1) the complainant never attempted to cultivate the land, (2) the prisoner was acquitted of a prior charge of trespass brought by the complainant, and (3) that the accused is entitled to complete the agricultural operations, on the ground that he who sows must reap.

Held that the mere fact that a man in possession does not cultivate the land possessed, cannot justify the wrongful entry of another.

Held also that the acquittal on a previous charge does not excuse the trespasser if the present wrongful entry was proved.

Held further that the maxim "*he who sows must reap*" cannot be applied to excuse a trespasser. 7. T. L. R., App. 61.

4.—*Entry into Court.*

An entry into a Court, which is open to the public, would not constitute criminal trespass, even though such an entry is effected after an order of the Court prohibiting it. 10. T. L. R., App. 2[illegible].

PENAL CODE.—(*Continued*).

5.—*Procession through Public street.*

Accused used a certain public street for carrying a procession through, and, on the finding that they had no right to so use the street, were convicted for criminal trespass and rioting.

Held that there can be no criminal trespass on public streets: and that therefore, the conviction under that count is illegal.

9. T. L. R., App. 39.

6.—*Criminal trespass into Sirkar waste land.*

Sircar's remedy under the Land Conservancy Regulation (II of 1067).

Held that to sustain a conviction for criminal trespass, the property trespassed into must be clearly shown to have been in the complainant's possession; and that where the property is a Sirkar waste land lying unenclosed, the Government cannot maintain an action for criminal trespass under the Penal Code, but may exercise the powers vested in its executive by Regulation II of 1067.

Sirkar vs. *Avoobekkar.* 11. T. L. R., 146.

SECTIONS 447 & 352.

—*Criminal trespass and assault—when they are independent offences and when not.*

Whether these offences form part of one transaction or are distinct, must be decided with reference to the circumstances of each case. If the object of the trespass is to commit assault, the trespass and assault may be treated as parts of one continuous transaction; but if the object of trespass is not assault (but the trespass leads to assault) the trespass and assault may be distinct offences. 8. T. L. R., App. 8.

SECTIONS 447, 380 & 395.

In investigating charges under any of the three sections above named, Magistrates have only to decide whether the accused persons wrongfully deprived complainants of possession of their property, and if that fact is not proved, they have simply to dismiss the complaint. Declarations as to possession can be made by first class Magistrates only under the provisions of chapter 40 of the old Criminal Procedure Code. 1. T. L. R., App. 7.

SECTIONS 448 & 453.

—*House trespass and house breaking. Persons entitled to legal possession.*

Where the accused, manager appointed to an institution in supersession of another, opened rooms belonging to the institution

with new keys as he did not get the old keys from his predecessor, and was charged and convicted under Sections 441 and 453 of the Penal Code :

Held that as the accused is legally entitled to the possession of the rooms he committed no offence by opening with new keys the rooms which were under the lock placed by his predecessor—complainant—while he was in office. 12. T. L. R., App. 7

SECTION 451. SEE CASE UNDER SECTIONS 380 AND 451.
12. T. L. R., App. 25.

SECTION 453. SEE CASE UNDER SECTIONS 380 AND 453.

SECTIONS 457 and 445.

—*House trespass and house-breaking—Difference explained.*

A is charged with having put his hand through an aperture above the beam of a shop and removed dishonestly from within cloths to the value of 12 Rupees. The Sub-Magistrate convicted A of an offence punishable under Section 380 of the Penal Code.

Held that A has committed the offence of *house-breaking* in that, as defined in the Code, the introduction of any part of the criminal trespasser's body is sufficient to constitute that offence.

Held also that house-breaking is simply an aggravation of house-trespass, the aggravating circumstance being the entry in one of the six ways specified in Section 445 of the Penal Code.
8. T. L. R., App. 63.
10. T. L. R., 141,

SECTION 465. SEE SUPRA CASE UNDER SECTIONS 419 & 465.
8. T. L. R., App. 44.

SECTION 467.

—SEE SUPRA CASE UNDER SECTIONS 193 and 467. 10. T. L. R., 144.

SECTION 490.

—*Breach of contract—continuing contract—Applicability of the Section to contract to supply bulls for a transit cart.*

Held that Section 490 of the Penal Code does not apply to a contract to supply stage bullocks for a transit cart, the contract not being one to "render personal service or to act as a servant during a voyage or journey, or to guard any person or property during a voyage or journey."

Held further that where the contract is a continuing one, Section 490 does not apply, unless a specific act or omission

constituting a breach of the contract, is complained of, specifying the place of the occurrence of the breach. 11. T. L. R., App. 30.

SECTION 494.

1.—*Christian Marriage.*

The essentials of a contract of marriage among Christians, is substantially the same everywhere, and by marriage must be understood the voluntary union for life of one man and one woman to the exclusion of all others. Marriage is something more than a contract. It involves a complete change of status and cannot be modified according to the pleasure of the parties. For the contract of Christian marriage, the free and reasonable consent of the parties is indispensable. Where, therefore, a boy of seven was said to have contracted a marriage with a girl of six (the parties being Syrian Christians) and it was not proved that the so-called marriage was subsequently validated, it was *held,* that such marriage was not binding and that, therefore, the subsequent marriage of one of them with a third party, did not amount to the offence punishable under Section 494 of the Indian Penal Code. *Hyde* vs. *Hyde* (followed.) *Sirkar* vs. *Mammen.* 2. T. L. R., 89.

2.—*Hindu Convert to Christianity—Second marriage of, during unconverted first wife's life-time—Absence of law to compel first wife to join her husband—Effect of.*

Where a Hindu convert to Christianity, while having a Hindu wife who adhered to her original faith, contracted a second marriage:

Held that the husband and the second wife were guilty of the offence of bigamy:

And that the absence of a law in the State, to compel the first wife to join her husband on pain of their relationship as husband and wife being determined, would not affect the nature of the offence. *Sirkar* vs. *Annama Varithal.* 11. T. L. R., 147.

3.—*Marriage among Jacobite Syrians.—Canon and Customary Laws—Effect of.*

Held over-ruling the decision in Criminal Appeal No. 35 of 1057 published at page 90 of the Travancore Law Reports, vol. II, (Reprint vol. II. page 89):

(1) That the canon law which fixes the marriageable age for men and women at 14 and 12 respectively, has no effect unless ratified by the secular sovereign of the State;

(2) That in the absence of a statutory enactment, the law governing the marriages of Syrian Christians in Travancore is, as

in cases of inheritance and succession, the law of custom, and not the canon law;

(3) That the canon law cannot be adopted without evidence that it is binding on the people to whom it is sought to be applied;

(4) That so far as the Syrian Christians in Travancore are concerned, there is cogent evidence that they do not consider the canon law as binding on them;

(5) That there is evidence of a valid custom of numberless marriages being solemnized in the Syrian Church, though contracted below the age of 12 years;

(6) And that such marriages should be deemed valid in the absence of statutory prohibition. *Sirkar* vs. *Kuruvila.*

11. T. L. R., 33.

SECTION 497.

—*Adultery—form of complaint. Indifference of husband.*

No specific form of complaint is prescribed for a charge of adultery. An oral complaint is as good as a written one, and is sufficient for a Magistrate to proceed upon.

Mere negligence, inattention, dullness of apprehension or indifference on the husband's part, will not suffice to constitute him an assenting or conniving party to the wife's adultery. Intention on the husband's part that the wife should commit adultery, is essential to constitute such assent or connivance. *Sirkar* vs. *Cheyathu Mahomed.* 9. T. L. R., 124.

SECTION 498.

—*Enticing away a married woman.*

Where a married woman is enticed away for illicit intercourse, the fact that she went voluntarily with the offender, would not affect the criminality of his offence. *Sirkar* vs. *Cheyathu Mahomed.* 9. T. L. R., 124.

SECTION 504.

—The prisoner, a cultivator and a Shanan by caste, is convicted of an offence under Sec. 504 for words spoken to a Policeman who happened to be passing by on the road. The offence seems to be of a trivial nature. The specific insult offered seems to have been an invitation to the Policeman to climb the speaker's palmyra trees. The Policeman having threatened to complain, the prisoner suggested that he might complain "to his father," a piece of raillery the exact force of which is not apparent.

PENAL CODE.—(*Continued*).

Held that these facts do not constitute an offence under Sec. 504 of the Penal Code. It can hardly be argued that the prisoner expected, or knew, that these words were likely to cause the Policeman "to break the public peace or commit some other offence." 1. T. L. R., App. 12.

SECTION 511.

—*Failure to certify satisfaction of decree out of Court.*

A decree-holder whose decree was partly satisfied out of Court sued out execution of the full amount due under the decree, without intimating to Court the fact of the partial satisfaction. The Sessions Judge before whom the case was committed convicted the decree-holder under Section 193. In appeal, the question having been raised that the decree-holder was not bound to mention the partial payment in his application for execution.

Held that Section 255 of the C. P. C. renders it obligatory on a decree-holder to certify to Court payments made to him out of Court under the decree.

Held also that payments made out of Court in satisfaction of a decree, but not certified to Court, may be recognized by a Criminal Court for the purposes of a prosecution under Section 210 of the Penal Code.

Held further that the appropriate Sections under which the prisoner should have been convicted are Sections 210 and 511 of the Penal Code, though his offence falls under Section 193 also. *Sirkar* vs. *Mathai.* 11. T. L. R., 46.

POLICE.

1.—*Examination by, of witnesses—Retention of under-trial people unnecessarily.*

It is improper to keep in custody men accused of offences without bringing them to trial. Police officers should not be allowed to examine or cross-examine the witnesses and the accused except through the Magistrate. There is however no objection to a Police Officer being present in court to watch the trial. *Criminal Circular* 21 *of* 1060. 4. T. L. R., App. 7.

2.—*Competency of Magistrates to take up cases against.*

The orders of Government, dated 8th August 1889 and 23rd June 1890, do not absolutely prohibit Magistrates from taking up cases against the Police. 8. T. L. R., App. 48.

POLICE.—(*Concluded*).

3.—*Recording of confession before illegal—Inadmissibility in evidence.*

Confessions made before a Police Inspector cannot be used in evidence against accused persons, and it is irregular to record such confessions. *Sirkar* vs. *Bhagyam.* 10. T. L. R., App. 23.

4.—*Enquiry by—Warrant cases.*

In warrant cases, the Magistrates would do well to invoke the aid of the Police in collecting evidence especially where the complainants are poor men unable to engage the services of lawyers and private detectives. 10. T. L. R., 87.

POLICE CUSTODY.

—*Period of detention of accused in Police custody in uncharged cases.*

Held by a FULL BENCH that the total period of detention of an accused person in Police custody during Police investigation should not exceed 15 days *in all*; i. e., no accused person should be in the custody of the Police for more than 15 days without being charged before a Magistrate. After the accused is charged, the Magistrate has ample powers under Sec. 255 of the Cr. P. C. to adjourn the case for further evidence. 10. T. L. R., App. 48.

POLICE DIARY.

—*Admissibility of in evidence.*

Police Diaries being confidential communications, cannot be treated as entries made in the discharge of professional duty, and are, therefore, not admissible in evidence. *Karayalen Pillai* vs. *Sheikammathu Ravuthar.* 9. T. L. R., 188.

POLICE AND MAGISTERIAL RECORDS.

—*Not exhibited—Prisoner's Counsel's right to use.*

With the permission of the presiding Judges, the prisoner's counsel may, but not as a matter of right, be allowed to make use of such papers with a view to help the Court. *Criminal Circular, No.* 3 *of* 1060. 4. T. L. R., App. 1.

POLICE REGULATION.

SEE CASES UNDER REGULATION IV. OF 1056.

—SEC. 29—*Imprisonment under.*

Held that imprisonment awarded under Section 29 of the Police Regulation extinguishes the fine and that, under this

POLICE REGULATION.—(*Concluded*).

Section, imprisonment could be awarded only after the Magistrate is satisfied that the fine cannot be levied. 8. T. L. R., App. 79.

POLICE REPORT.

—The charge sheet and other Police reports received by the Magistrates should form part of the records sent up to the High Court. *Criminal Circular, No.* 2 *of* 1060. 4. T. L. R., App. 1.

POSSESSION.

1.—*Evidence of, within* 12 *years—Defective title.*

Held that in cases of disputed title, evidence of possession is often of the greatest importance. It is peculiarly necessary in such cases that the evidence of witnesses' produced to prove possession should be carefully tested by the presiding Judge.

Held also that the Plaintiff failing to make out possession within 12 years of the suit, his case necessarily fails. *Pichamuthu* vs. *Kuthalam.* 1. T. L. R., 5.

2.—*Want of undisputed—Mortgage money.*

A mortgagee who has not been put in undisputed possession under the mortgage has a right to sue for the money within 12 years from the date of the mortgage. *Nallayappen* vs. *Abdalkadir Pillai.* 1. T. L. R., 74.

3.—*Effect of want of enquiry of party in--Vendor without possession—Purchase.*

Where Plaintiff purchased property said to be outstanding on mortgage of which the vendor had not been in possession for 30 years, without inquiry of the party in possession or investigation of his title.

Held that, on the evidence, the mortgage set up by Plaintiff was not proved.

Held further that the whole transaction was *mala fide* and a mere traffic in litigation. *Madhava Perumal* vs. *Thirukuruka Perumal.* 1. T. L. R., 104.

4.—*Hostile.*

Where a person entitled to immovable property lives with another who is in actual possession and management of such property, the latter's possession cannot be said to be exclusive or hostile to the former in the absence of special circumstances. *Enaculamadi* vs. *Isakky.* 3. T. L. R., 54.

POSSESSION.—(*Concluded*).

ORDER OF CRIMINAL COURT, AS TO.

1.—The Magistrates are directed to take care that they make no extra judicial declarations regarding the right of any party to possession. In investigating charges under Secs. 380, 395 and 447 of the Penal Code, they have only to decide whether the accused persons wrongfully deprived complainants of possession of their property, and if that fact is not proved, they have simply to dismiss the complaint. 1. T. L. R., App. 7.

2.—*Of immoveable property—Illegality of, in the absence of a preliminary order as to likelihood of a breach of the peace.*

SEE CRIMINAL PROCEDURE CODE, SEC. 128.

POSSESSORY SUIT.

1.—*Limitation. Effect of suit being brought six months after dispossession.*

Possession without proof of title is sufficieut to entitle a Plaintiff to recover in ejectment from a mere trespasser. This right would not be affected by the suit for ejectment being brought 6 months after the date of dispossession, though in such a case the Defendant may defeat the Plaintiff's suit by showing a title in him or setting up the *jus tertii* of the true owner with his sanction. *Anthony* vs. *Govinda Shenoi.* 9. T. L. R., 153.

2.—*Duration of possession. Limitation. Defendant's right to raise questions of title. Under-estimation of plaint property. Plaintiff's right to recover whole property.*

Plaintiff's peaceful possession prior to the date of trespass however short the duration of that possession may be, gives him sufficient title to maintain an action for ejectment, against the trespasser. The period of limitation applicable to such a suit is 12 years, to be computed from the date of trespass.

The Defendant is not debarred from raising questions of title in such suits, as in summary suits governed by Section 13 of the Limitation Regulation III of 1040 (repealed by Regulation II of 1062).

Where the Plaintiff claims lands situate within boundaries specified in the plaint, he is not debarred from recovering the whole property within those boundaries, by the mere fact that the actual area is in excess of that given in the plaint. *Narayanen* vs. *Sankaran.* 9. T. L. R., 176.

3.—*Effect of the old and new Limitation Regulations on—Summary disposal.*

POSSESSORY SUIT.—(*Concluded*).

Under Section 13 of the old Limitation Regulation (III of 1040), the Courts were distinctly prohibited from hearing the parties on the question of title, if the Plaintiff sought recovery of immovable property, on the ground of possession. The absence of similar provision in the new Regulation (which wholly repealed the old), renders it imperative on the Courts to investigate into all the pleas raised by the parties in such suits.

Even Section 13 of Regulation III of 1040, did not authorize the summary disposal of a suit in which other reliefs than the recovery of immovable property, were sought. *Krishnan* vs. *Kunjuthommi.* 9. T. L. R., 171.

4.—*Limitation Regulation II of* 1060, *Sec.* 29 *as amended by Regulation V of* 1068—*Whether standing crop is claimable under.*

Held that Section 29 of the Limitation Regulation II of 1062, as amended by Regulation V of 1068, entitles a person dispossessed of "any *house, building* or *land*" to recover possession of the same, but that it does not apply to standing crops. *Raman* vs. *Mathevan.* 12. T. L. R., 180.

PRELIMINARY TECHNICAL OBJECTIONS.

Such objections ought to be taken at the earliest opportunity by the party interested in taking it, and should be considered and disposed of by the Court without unnecessary delay; and the party affected by the decision should protest either by representations to the Court or by appeal; otherwise the party should be taken to have allowed the decision to remain unquestioned. *Joseph Kathanar* vs. *Chakko.* 9. T. L. R., 138.

PRESCRIPTIVE TITLE.

—*Hereditary office—Suit in respect of.*

A title by prescription in the case of an office, is a title acquired by a long and continuous exercise or performance of the functions of that office and the enjoyment of the emoluments or perquisites appertaining thereto, without any interruption, as a matter of right and as an exclusive holder thereof. *Vasudevan Elayathu* vs. *Sanakran.* 12. T. L. R., 93.

PRESUMPTIONS.

See—Hindu Law—Joint Family. 6. T. L. R., 43.
—Marriage. 7. T. L. R., 38.
See—Malabar Law—Debts. 3. T. L. R., 42.

PRESUMPTIONS.—(*Concluded.*)

SEE MALABAR LAW —SELF—ACQUISITION. 2. T. L. R., 2.
——DIVISION. 2. T. L. R., 33.
—DECREE AGAINST KARANAVEN. 7. T. L. R., 158.
See—Evidence. 2. T. L. R., App. 17.
9. T. L. R., 118.
See—Charitable Institutions. 10. T. L. R., 192.
See—Burden of proof. 7. T. L. R., 18.

PREVIOUS CONVICTION.

See Criminal Procedure Code, Sec. 198.

PRINCIPAL AND AGENT.—*Contract—agent's right to sue.*

Where a contract is made by an agent, the general rule is that the principal and not the agent is the real party to the contract and as such entitled to sue and be sued. The chief exceptions to this rule are (i) Where the contract is in writing and imports to be made personally with the agent. (ii) Where the agent is the only ostensible principal and thus in effect the contracting party. (iii) Where the agent has a special interest in the subject matter of the contract, and not merely the custody thereof. *Ferguson* vs. *Valentine.* 8. T. L. R., 80.

PRISONERS UNDER TRIAL.

1. Under-trial prisoners are entitled to have full intercourse with their Vakils out of the hearing of the Police officers, in whose custody they are.

2. The Magistrates and officers in charge of the Police Stations are, therefore, directed to give, at all reasonable hours, every facility to the prisoners' Vakils to hold confidential consultations with their clients, consistently with the safe custody of the accused.

3. No prisoner's Vakil has any right to claim admission into the prisoner's cell at unreasonable hours. During enquiry and trial his right to hold conversation with his client is unrestricted. *Criminal Circular, No.* 2 *of* 1061. 4. T. L. R., App. 9.

PROCESS SERVICE RULES.

See Civil Circular, No. 14 *of* 1061. 4. T. L. R., App. 25.

PROMISSORY NOTE.

—Jurisdiction—Negotiable instrument—Plea of discharge—Effect of, as against indorsee.

PROMISSORY NOTE.—(*Concluded*).

A residing at Quilon executed to B carrying on business at Alleppy a pro-note which specified no place of payment. B indorsed the pro-note to B who sued in the Alleppy Zillah Court for recovery of the money. A objects to the jurisdiction of the Alleppy Zillah Court and pleads discharge to B.

Held that in the absence of any mention of a specific place for payment, the reasonable inference would be that the payment should be made where the holder of the note permanently resides or carries on business; that where there is no express covenant, the presumption of law is that the obligor is bound to seek the obligee and tender the money at the residence or place of business of the latter; and that consequently, the cause of action must be taken to have arisen within the jurisdiction of the Alleppy Zillah Court, and the objection as to jurisdiction is unsustainable.

Held also that a promissory note is a negotiable instrument wherein the property could be transferred by endorsement and delivery thereof; and that, therefore, the plea of discharge cannot affect C's claim as against A. *Velayudan* vs. *Ramasawmy Aiyan.*

11, T. L. R., 185.

PROTESTANTS.—Matrimonial suit.

See matrimonial suit. 10. T. L. R., 95.

PUBLIC ACCOUNTS.—*Presumption as to entries in. See Burden of proof—Public accounts.* 9. T. L. R., 188.

PUBLIC DOCUMENTS.—*Presumption as to genuineness.*

See Burden of proof. Public documents. 7. T. L. R., 18.

PUBLIC INSTITUTIONS.—*Sirkar's right to assume management of—Aggrieved party's remedy.*

The Sirkar has the power of interfering in the affairs of public institutions under the control of hereditary trustees, in cases of gross neglect of duty or misconduct, and of assuming the management of such institutions, without recourse to law, if that course is necessary in the interests of such institutions; but such assumption of management will not prejudice the rights of the agrieved parties to obtain redress for wrongs suffered by them, by an appeal to the judicial tribunals in due course of law. *Sirkar* vs. *Sesha Aiyan.*

8. T. L. R., 1[illegible]

PUBLIC SERVANTS.

1.—*Acts of—non-liability of Government.*

Held that the public servants, and not Government who appointed them, are liable for the wrongs done by them. *Sirkar* vs. *Narayanan.* 1. T. L. R., 14.

2.—*Sirkar's liability to defend, in the bona fide discharge of duties.*

Held that when public servants (whether they belong to the executive or judicial branches of the administration) act in good faith on behalf and in the interests of Government in the discharge of their duties, the Sirkar is bound to defend them, especially in a case like the present one where they have taken the advantage resulting from the official act of their servant. *Sirkar* vs. *Aiyappen.* 6. T. L. R., 32.

3.—*Breach of private contract by—Damages.*

See Contracts—Breach of contracts. 11. T. L. R., 90.

PUTHUVAL.

1.—*Suit for cancelment of registry of—limitation.*

Held by a FULL BENCH that suits for declaration of title to immoveable property and for setting aside orders of Revenue authorities refusing to recognize Plaintiff's title and directing registration of the land as Government Waste are governed by Art. 10 of the Limitation Regulation and should, therefore, be brought within one year and not 12 years from the date of the order sought to be cancelled. *Padmanaban* vs. *Dewan of Travancore.* 11. T. L. R., 70.

2.—*Sirkar's right to set aside a grant once made—effect of vendor's (or—Judgment-debtor's) conduct on vendee (or—purchaser at court sale).*

After once registering a *Puthuval* land in the name of a person, the Sirkar has no power to set aside that registry and grant the land to another.

The conduct of a vendor or Judgment-debtor subsequent to the sale, would not affect the vendee or purchaser at court sale *Narayanan* vs. *Paulos and Sirkar.* 9. T. L. R., 195.

3.—*Reclaimer and Sirkar Registree—Suit as between—Reclaimer's claim to compensation.*

Suit by the first taker of certain Sirkar waste land for cancellation of a registry of the land made by the Sirkar in the name of another and for recovery of the land, or in the alternative, for recovery of a certain amount as compensation for the

reclamation of the land and improvements effected thereon. The Zillah Judge held the suit not maintainable. Plaintiff appealed.

Held that the suit, in so far as it seeks the cancelment of the Sirkar registry and the recovery of the land was rightly held not maintainable; that, as until recently no consent of the Sirkar authorities was needed to reclaim Sirkar waste land for cultivation and the recognized usage of the State had been to register waste lands in the name of the first taker, it is but equitable that where a registry is made in the name of a person other than the first taker and improver, the latter should be enabled to recover compensation for improvements made by him; and that no law debars the cognizance of such claims by civil courts, and plaintiff's claim for compensation should have been enquired into by the lower court. *Pylo* vs *Kela and Sirkar.* 10. T. L. R., 85.

See also "Limitation, Art. 10."

QUEEN'S COIN.

Meaning of.

VIDE "PENAL CODE, Sec. 243." 8. T. L. R., App. 25.

RAZINAMAH.

—*Jurisdiction of Appellate Judge to affirm.* Where an appeal is pending in a Superior Court and the parties agree to compromise before a Lower Court to which the suit has been remanded, the Judge of the latter has no jurisdiction to pass an order affirming the Razinamah. *Mariza* vs. *Muthan.* 4. T. L. R., 25.

SEE ALSO "EVIDENCE IN CIVIL CASES—MISCELLANEOUS DOCUMENTS."

RECLAMATION.

—SEE "JENMI AND KUDYAN—RIGHTS OF." 9. T. L. R., 50.

—SEE ALSO "LANDLORD AND TENANT." 9. T. L. R., 48.

—SEE "PUTHUVAL." 10. T. L. R., 85.

—*From bed of Lakes—Reclaimer's right to—Sirkar's right of disposal—Law of accretions—Whether applicable.*

Held that reclamations from the bed of a lake are, like Puthuvals, at the disposal of Government, and neither the fact of reclamation nor possession will entitle the reclaimer to obtain the registry thereof in his name or to question a pattah granted by the Sirkar to a third party. The law of accretions is inapplicable to such reclamations. *Kochan* vs. *Mytheenkunju and Sirkar.*

12. T. L. R. 111.

RECOGNIZED AGENT.

Held that a recognized agent cannot prosecute a suit in his own name though after making his principal formally a party to the suit, he may conduct it, as a recognized agent, and that a defect of party of the kind cannot justify the dismissal of the suit, the fair procedure being to allow reasonable time to make the principal a party. *Makoji* vs. *Kullathoor Aiyen.* 8. T. L. R., 30.

REDEMPTION.

—SEE CASES UNDER "AUCTION PURCHASER." 12. T. L. R., 11.

12. T. L. R., 141.

See also cases under "Mortgage.—REDEMPTION."

REFERENCE IN CRIMINAL CASES.

1.—*Held* that to invoke the interference of the High Court, it must be shown that the Subordinate Magistrate has materially erred in law or procedure or that the punishment awarded was too severe or inadequate. *Criminal Circular, No.* 21 *of* 1057.

1. T. L. R., App. 40.

2.—When Sessions Courts on examining the records called for by them, find that the judgment or order is contrary to law, they should report the proceedings to the High Court.

1. T. L. R., App. 14.

3.—Ordered that District Magistrates may hereafter make their references direct to the High Court, and that such references should be in the form of communications addressed to the Registrar.

1. T. L. R., App. 15.

4.—In references made by District Magistrates and Sessions Judges, the whole records should be sent to the High Court except where the delay involved might be prejudicial to the accused. *Criminal Circular, No.* 2 *of* 1058. 1. T. L. R., App. 19.

5.—When a reference is made, the letter of reference should set forth clearly the facts of the case. 10. T. L. R., App. 22.

REGISTERED CONVEYANCES.

——*Priority of lien-Hypothecation and mortgage.*

Held that as between two registered conveyances the lien created by the prior one shall prevail. *Sankaran* vs. *Sankaran.*

11. T. L. R., 170.

REGISTERED PROPRIETOR.

——*His title to land. Conditions of forfeiture of squatter.*

Held that the registered proprietor of a land does not forfeit his title to it by leaving it uncultivated for any length of time, without a formal abandonment of his title by non-payment of Sirkar dues. His title subsists on the property till the Sirkar, by any legal means, sells that title for the realisation of the arrears of its dues or, with his knowledge and consent, transfers the registry to the name of any other person. *Vappu* vs. *Marthandan.*

8. T. L. R., 45.

REGISTRATION.

SEE "REGULATION I OF 1042."

REGULATIONS.

1. REGULATION I OF 1040. (*Criminal Breach of Contract.*)
2. REGULATION II OF 1040. (*Adjudication of claims to waste lands.*)
3. { REGULATION III OF 1040. (*old Limitation Regulation*). REGULATION II OF 1062. (*new*).
4. { REGULATION I OF 1042. (*old Registration Regulation*). REGULATION I OF 1070. (*new*).
5. REGULATION I OF 1043. (*Admission of vakils in criminal cases*).
6. REGULATION III OF 1054. (*Constitution of the Sadr Court*).
7. { REGULATION IV OF 1056. (*Police*). *and* REGULATION II OF 1058.
8. REGULATION I OF 1057. (*Civil Courts Regulation*).
9. REGULATION II OF 1057. (*Reconstitution of the Sadr Court*).
10. REGULATION III OF 1058 (*Boundary*).
11. REGULATION I OF 1059 (*Stamps*).
12. REGULATION I OF 1062 (*Court-fees*).
13. REGULATION VI OF 1063. (*Opium and Bhang*).
14. REGULATION VII OF 1063. (*Salt Revenue*).
15. REGULATION VIII OF 1063. (*Tobacco Revenue*).
16. REGULATION I OF 1064. (*Anchal*).
17. REGULATION I OF 1067. (*The High Court Regulation*).
18. REGULATION II OF 1067. (*Land Conservancy*).
19. REGULATION I OF 1068. (*Revenue Recovery*).
20. REGULATION II OF 1068. (*Forest*).
21. REGULATION III OF 1068. (*Suits valuation*).
22. REGULATION II OF 1069. (*Towns Conservancy and Improvement*).

1\. REGULATION I OF 1040. (*Criminal Breach of Contract.*)

REGULATIONS.—(*Continued.*)

Criminal breach of contract—Section 2 of Regulation I of 1040 *Imprisonment—Agreement to pay penalty—Enforceability of or otherwise.*

Section 2 of Regulation I of 1040 only empowers a Magistrate to order Defendant either to repay the advance received by him under the original contract or to work out the contract, but not to sanction a compromise providing for payment of a penalty in excess of the advance.

A sentence of imprisonment can be passed in such cases only on proof that the Defendant failed to comply with the order of the Magistrate, but not in anticipation of disobedience to the order.

10. T. L. R., App. 14.

2. REGULATION II OF 1040. (*Waste lands.*)

—Sales of waste lands.—Omission to comply with the rules regarding the same—Effect of the same.

Held that omission to comply strictly with the provisions of Regulation II of 1040 and the rules framed under it, regarding the sale of Government waste lands, vitiates the sale and the private owner affected by the sale is entitled to recover the land sold.

Held also that acts and statutes of a Penal nature or those imposing a restriction, are always to be interpreted strictly. Where a man is compelled to relinquish certain rights in, or claims over, property for some special purpose, and a method of procedure is prescribed to enforce the law, it is always necessary to show that such procedure has been accurately followed. *Sirkar* vs. *Ranganathan and others.* 1. T. L. R., 8 & 11.

3. REGULATION III OF 1040. (*old Limitation.*)

AND—II of 1062 (*new*).

See "Limitation."

4. REGULATION I OF 1042. (*old Registration Regulation*) *and the amended.*

REGULATION I OF 1070.

SEC. 58.

1.—Zilla Civil Courts, on enquiries under Section 58 of the old Registration Regulation are not bound to hold a regular investigation as in a Civil Suit and to examine all the witnesses whom either party may choose to summon. An order passed by the Civil Court under this section, is final and there is no appeal to the High Court against that order, but it does not preclude parties from contesting the genuineness of the document in a regular Civil Suit. *Sawyer* vs. *Zeckariah Sett.* 2. T. L. R., 9.

REGULATIONS.—(*Continued*).

SECS. 67 & 68.

2.—*Offences of false personation for purposes of Registration and abetment thereof not triable by 2nd class Magistrates.*

See Proceedings, dated 30th Purattasi 1058. 2. T. L. R., App. 13.

SECS. 9 & 10.

3.—*Agreement to convey lands.*

A (Defendant) executed to B (Plaintiff) an agreement promising to convey certain lands to B receiving Rs. 410. It is alleged also that the agreement was subsequently renewed on receipt of a further advance of Rs. 35. B now sues to recover the cash advanced, with interest. The Zilla Judge dismissed the claim holding that, as the deeds relied on were unregistered, they could not be admitted in evidence.

Held that as the deeds are instruments falling under Sec. 10 of the Registration Regulation (I of 1042) and not under Sec. 9 their registration is not compulsory. *Mariam* vs. *Ouseph.*

7. T. L. R., 153.

4.—*Of lease-deed reserving an annual rent, compulsory.*

A lease-deed reserving an annual rent and not merely the payment of a certain sum for one year's rent, is compulsorily registrable. *Bagavathi Pillai* vs. *Rahuthan.* 8. T. L. R., 49.

5.—*Ignorance of fact of registration.*

Held inter alia that ignorance of the fact of registration is not a sufficient excuse for the failure to sue in time. *Padmanaben* vs. *Aiyappen.* 9. T. L. R., 181.

6.—*Partition deed—whether compulsorily registrable.*

Held that the registration of a partition deed is optional under Sec. 10 of the Registration Regulation. The fact that it relates to immovable property would not bring it under Sec. 9 of that regulation.

Held also that an unregistered partition deed is admissible in evidence though it may relate to immovable property. *Subramanian* vs. *Manikavasakam.* 11. T. L. R., 172.

7.—*Whether a letter promising a sale should be registered—Document registered by order of court—Impeachment of on ground of defect of schedule of property.*

Held that a letter simply promising to execute a conveyance of immovable property, does not require registration; and that it

REGULATIONS.—(*Continued*).

is admissible in evidence in spite of its compulsory registration. And that the validity of a registration compelled by order of a Court under Part XII of the registration Regulation, cannot be impeached on the ground that the schedule of the property covered by the document, was not supplied by the executant. *Manakavala Perumal Asari* vs. *Govinda Kymal.* 11. T. L. R., 131.

8.—SECS 9 AND 31. *Unregistered agreement relating to immovable property—Inadmissibility of in evidence.*

In a suit for recovery of land, the parties agreed to abide by oath, but instead of carrying out the oath-agreement, they came to a compromise in the presence of the Commissioner deputed to see the oath taken. The terms of the agreement of compromise were noted down by the Commissioner, and the parties signed the paper. This agreement was produced in Court, but no decree was passed on it, the suit having been dismissed. The Plaintiff in that suit now sues to enforce the terms of the agreement of compromise.

Held that the agreement, relating as it does to immovable property, is compulsorily registerable under Section 9 of the Registration Regulation; and, being unregistered, is inadmissible in evidence under Section 31 of the same Regulation.

Held also that the suit being on a written agreement, cannot be treated as one based on a verbal agreement.

The suit was consequently held unsustainable. *Sankaran* vs. *Velayudan.* 11. T. L. R., 200.

9.—*Registered mortgage and oral mortgage with possession—Superiority of title—Registration law—Scope of.*

See "mortgage—Possession under Mortgage." 12. T. L. R., 54.

5. REGULATION I OF 1043. (*Admission of Vakils in Criminal cases*). —*Order of fine against a Criminal Vakil by a District Magistrate in a sum not above Rs.* 50. *Whether appealable.*

The question having been raised whether a Sessions Court is competent to entertain an appeal against an order passed by a District Magistrate, imposing a fine on a Criminal Vakil under Section 11 of Regulation I of 1043, when the amount of the fine does not exeed Rs. 50.

Held that the procedure in the case is governed by Section 16 of Regulation I of 1043, which is among the sections of that Regulation expressly saved by the Code of Criminal Procedure, and

REGULATIONS.—(*Continued*).

that, therefore, the Sessions Court is competent to entertain the appeal, even though the amount of fine does not exeed Rs. 50.
12. T. L. R., App. 19.

6. Regulation III of 1054. (*Constitution of the Sadr Court.*) —Section 17.

See ' Sentence. Whipping." 1. T. L. R., 38.

7. Regulation IV of 1056. (*Police*) and Regulation II of 1058."

1.—*Conviction.*

Held by a majority that a Magistrate is not absolutely bound to inflict a substantive punishment in the case of offences under the Police Regulation. 3. T. L. R., App. 28

2.—Section 23.

Interpretation of the term 'imprisonment.'

Held that the imprisonment should not be rigorous.

Criminal Circular 14 of 1060. 4. T. L. R., App. 5.

3.—Sec. 23. *Clause 5. Spitting.*

Spitting chewed betel in a public yard does not fall within the language of Clause 5 of Section 23 of the Police Regulation.
7. T. L. R., App. 72.

4.—Sec. 29 *of the Police Regulation. Imprisonment. Effect of.*

Held that imprisonment awarded under Sec. 29 of the Police Regulation extinguishes the fine and that, under this section, imprisonment could be awarded only after the Magistrate is satisfied that the fine cannot be levied. 8. T. L. R., App. 79.

5—*Conviction under Section* 23, *Clause* 4 *of Regulation IV of* 1056—*Public road—Exposure of articles for sale on—Seizure.*

Where an accused has been convicted under Clause 4, Section 23 of Regulation IV of 1056 for exposing on the public road plantain bunches, &c., for sale and the articles ordered to be sold and the proceeds credited to Government.

Held that the order in respect to the sale of the plantain bunches, &c., was wrong, the law not authorizing a seizure of this sort, and that the proceeds of the sale should be refunded to the accused. 10. T. L. R., App. 30.

8. Regulation I of 1057. (*Civil Courts*).

1.—*Fees due to a hereditary village astrologer—Small cause.*

A claim for perquisites due to a hereditary village astrologer is a claim to immovable property within the meaning of Section 10

of the Travancore Regulation I of 1057, and as such not cognizable as a small cause suit. *Kesavan Potti* vs. *Ramacariar*. 1. T. L. R., 11.

2.—*Suit for maintenance—Small cause.*

A suit for maintenance by members of a Malabar Tarawad, not based on any express contract, involves virtually a question of title to immovable property, and as such is not a small cause suit within the meaning of Sec. 10 of Regulation I of 1057. *Kumaran* vs. *Velayudan.* 2. T. L. R., 31.

9. REGULATION II OF 1057. (*Reconstitution of the Sadr Court.*) ——*Section* 8.

Held that Sec. 8 of the High Court Regulation does not empower a single Judge to set aside the orders of the lower courts. *Kannen* vs. *Raman.* 5. T. L. R., App. 10.

10. REGULATION III OF 1058. (*Boundary Regulation*).

1.—*Cancelment of Pattah issued by the Settlement Department. Limitation.*

To bring a case within the provisions of Regulation III of 1058, there must be some dispute regarding a boundary between properties claimed under adverse titles. It is only in cases where the Settlement Department incidentally decides questions of title in connection with disputed boundaries, that the period of 2 months provided for an appeal to the Civil Courts, is applicable. Where there is no dispute about boundaries, but the question is concerning the registration of a holding, the limitation applicable is that prescribed by Article 10 of the Limitation Regulation, *viz.*, one year. *Mathevan* vs. *Krishnan.* 8. T. L. R., 78.

2.—*Scope of. Cancelment of Pattah. Neets of adoption, how to be impeached.*

Regulation III of 1058 (The Boundary Regulation) applies only to suits relating to boundary disputes between adjoining land-holders and not to suits raising questions of title between rival claimants to the land, the subject of claim.

A Neet of adoption granted by the palace is a public document and should ordinarily be accepted as proof of its contents, unless the party impeaching its validity shows that it was obtained by misrepresentation, fraud or the like. *Nangeli* vs. *Kunjuna.* 8. T. L. R., 99.

3.—*Removal of Demarcation stone. Prosecution.*

The removal of, or tampering with, a demarcation stone is an offence under Regulation III of 1058, and cannot be dismissed for

default of prosecution, as, under that Regulation, it is not essential that the prosecution should be conducted by a complainant, the Sirkar being the prosecutor. 10. T. L. R., App. 21.

4.—*Removal of boundary stones—Section 430 I. P. C. and Section 10 of Regulation III of 1058—Private party's right to institute prosecutions under the said Regulation—Supply of water—Diminution of.*

Held that if the removal of demarcation stones is likely to affect the complainant's right, now or in future, the latter has every right to complain of the act.

Held also that the empowering of certain public officers to institute proceedings in such cases, does not *per se* take away the natural right of every subject to seek redress for wrongs committed against him.

Held further that to constitute the offence of mischief under Section 430 I. P. C. actual diminution of the supply of water is not necessary, the likelihood of the diminution of such water being itself sufficient. [12. T. L. R., App. 36.

11. REGULATION I OF 1059. (*Stamps.*)

1.—*Rulings under Stamp Regulation.*

(1) Receipts for anamathu moneys exceeding Rs. 20 should bear an one-anna stamp. 3. T. L. R., App. 16.

(2) *Held* that where the instrument is merely a hypothecation and not a hypothecation and receipt combined it does not come within the purview of Section 6, the receipt is merely recited, and is said to be evidenced by a distinct instrument.

3. T. L. R., App. 18.

(3) The question having arisen whether a stamp is necessary in the following cases, *viz*:—

1. On the return of delivery of moveable property exceeding 20 Rs. in value to suitors by the Court.

2. On the return of document filed in suits and other proceedings,

We think that looking to the terms of Section 55 of Regulation I of 1059, and the definition of "receipt" contained in Section 3, Clause 16, a party taking such property or documents cannot be charged with stamps duty unless the delivery is made "in satisfaction of a debt." The parties are under no obligation to give receipts in other cases, nor can the acknowledgments usually given for the return of documents or re-delivery of moveable property

(otherwise than in satisfaction of a judgment-debt) be regarded as receipts within the definition already alluded to.

3. T. L. R., App. 19.

SEC. 3.

2.—*Levy of stamp duty and penalty when law has changed after date of instrument. Distinction between Bond and promissory note.*

Held that, under Sec. 3 of the Stamp Regulation, an instrument whereby a person obliges himself to pay money to another without an undertaking to pay to the latter or his order or to bearer, is a bond and not a promissory note.

Held also that the amount of stamp duty payable on any instrument is regulated by the law in force at the date of execution thereof, while the amount of penalty due on the same is to be fixed under the law in force at the time of the levy. *Makoji* vs. *Kulathoor Aiyan*. 8. T. L. R., 30.

SEC. 31.

3.—*Claim based on unstamped deed—Admission of the sum in evidence.*

Held inter alia that Sec. 31 of the Stamp Regulation only prohibits reception in evidence of unstamped or insufficiently *stamped documents*; but does not invalidate claims evidenced by such documents. *Makoji* vs. *Dawood*. 7. T. L. R., 162.

4.—*Sections 34 and 39 of the Stamp Regulation—Erroneous levy of stamp duty—Maintainability of suit relating to—aggrieved party's remedy.*

Plaintiff sues the Sirkar to recover the amount of stamp duty and penalty levied by Dewan Peishcar under Sec. 34 in the course of his official business.

Held that the act of the Dewan Peishcar being one done in good faith and under the express authority of law, no action will lie against the Sirkar.

Held also that the only remedy open to the aggrieved party, in such cases, is to apply to the Dewan to refund the amount erroneously collected, (Sec. 39), and that such application should be made within one year from the date of payment. *Govindan* vs. *Sirkar*.

9. T. L. R., 55.

5.—*Art. 10 of the Stamp Regulation—Sale of equity of redemption—Stamp duty.*

Where the equity of redemption is sold subject to payment of an outstanding mortgage, the value of stamp paper should be calcu-

lated on the value of the equity of redemption plus the amount of the mortgage. *Damodaran* vs. *Gungadara Aiyen.* 9. T. L. R., 183.

6.—*Secs.* 35 *and* 36. *Documents stamped under Stamp Regulation—Admissibility of in evidence. Civil Court's power to revise Dewan Peishcar's order under the sections.*

Held that a document stamped under Secs. 35 and 36 of the Regulation, is admissible in evidence under para 2 of the latter section, though it was illegally stamped.

And that it is not open to a Civil Court to consider in a civil suit the legality or otherwise of a Dewan Peishcar's order under Secs. 35 and 36 of the Stamp Regulation. *Manakavalaperumal Asari* vs. *Govinda Kymal.*

STAMP REGULATION (I OF 1059) *offences under.*

1.—*Section* 58—*Offence under—Imprisonment in default of payment of fine. Penal Code, Sec.* 67.

Held that Section 67 of the Penal Code applies only to convictions under that Code and not to offences punishable under special or local laws; and that the award of an alternative sentence of imprisonment, in default of payment of fine, on conviction under Section 58 of the Stamp Regulation, is illegal.

10. T. L. R., App. 45.

2.—*Conviction under Section* 58 *of the Stamp Regulation. Insufficiency of Stamp paper—Construction of Instrument—Sale not trust.*

Where a Magistrate found that a certain instrument comprised two distinct matters (sale and trust), separately chargeable with Stamp duties, and convicted the prisoner under Section 58 of the Stamp Regulation for the insufficiency of the stamp paper:

Held that the instrument for the execution of which the first class Magistrate has convicted the executant under Section 58 of the Stamp Regulation was a simple sale deed and not a deed of trust as well; and that the provision in the document relating to the expenses of the vendee on account of the performance of the funeral ceremonies of the vendor and of the payment of maintenance to his daughter, did not create a trust, as they formed merely items of consideration for the sale payable at a future time. 12. T. L. R., App. 38.

3.—*Sreekariakarey of Sirkar Pagoda—Conviction under Section* 58 *of the Stamp Regulation—Money received on behalf of Government—Receipt for—Insufficiency of stamp.*

Where a Sirkar servant was convicted under Section 58 of the Stamp Regulation for not affixing an one anna adhesive stamp to a receipt granted by him in acknowledgment of the receipt of a certain sum from the Taluq treasury in connection with the Oolsavam ceremony in a pagoda:

Held that the convicton is wrong in that the accused gave the receipt in question for money *received by him on behalf of Government*, and the receipt given by him, therefore, comes within the general exemption to Article 57 of the Stamp Schedule,

12. T. L. R., App. 31.

12. REGULATION I OF 1062. (*Court-fees*).

1.—*Section 5. Suit to set aside court-sale.*

Held that the value of a suit to set aside a court-sale is not the amount of the sale proceeds but is the market value of the property sold, calculated according to the mode prescribed by the Court-fees Regulation—Sec. 5, Clause A or D as the case may be. *Raman Namboori* vs. *Govindan.* 8. T. L. R., 166.

2.—*Review Petition—Court-fee. Delay. Court holiday—Limitation Regulation.* SEC. 5.

Where a Review Petition was presented to the Court on the second day after the expiry of the 3 months prescribed by Article 2 of Schedule No. 1 of the Court-Fees Regulation (I of 1062), the two previous days being holidays, and the petitioner claimed exemption from liability to pay the full fee leviable under Article 3 of the same Schedule by the provisions of Section 5 of the Limitation Regulation (II of 1062):

Held by a FULL BENCH that the provisions of the Limitation Regulation cannot be imported into those of the Court Fees Regulation, in the absence of express legislative sanction.

And that, in the present state of the law, the Review Petition can be admitted only on payment of the full fee prescribed by Article 3. A. S. No. 89 of 1066 (Review). 10. T. L. R., App. 1.

3.—*Valuation of suit—Suit for declaration of managership of joint family—Court-fees Regulation Sec. 4, Clause V, Sub-clause (d)—Competency of a Judge to reverse another Judge's order as to valuation. Effect of the irregularity on the decree passed.*

Held that where a Judge has judicially decided the question of valuation of a suit, it is not competent for a successor in the hearing of the case to reopen the question; but where the question

has been reopened and the first order set aside, the irregularity cannot be treated as one sufficient to set aside the decree that followed, unless the second order as to valuation is itself wrong.

Held also that in a suit for a declaration of Plaintiff's right to hold and manage property which jointly belongs to himself and others, institution fee should be levied on the market-value of the subject-matter of the suit, under Sub-clause (*d*) of Clause 5 of Section 4 of the Court-fees Regulation. Such a suit is not analogous to one for removal of a Karanavan of a Marumakkatayam Tarawad. *Kumaraswamy* vs. *Veeriaperumal.* 12. T. L. R., 44.

4.—*Decree cancelling attachment—Appeal from—Court-fee.*

Held that in an appeal by Defendant against a decree setting aside his attachment of certain properties alleged to belong to Plaintiff, the Court-fee need be assessed only on the value of the interest claimed by the attaching creditor (Defendant—Appellant) *viz.*, the amount due under his decree, even though the value of the attached property may exceed that amount. *Krishnar Potti* vs. *Vasudevar.* 12. T. L. R., 157.

5.—*Pecuniary jurisdiction—attachment. attaching creditor—Clause VII Section 4 of the Court-fees Regulation.*

Held also that Clause VII, Section 4 of the Court-fees Regulation provides that the amount for which the attachment is made is the value of the suit; that though that is the value for the purposes of Court-fees, there is no express provision of law anywhere that a different value should be taken for the purposes of jurisdiction; that the suits valuation Regulation Section 2, accepts the Court-fee valuation as the one for the purpose of jurisdiction also; that the practice of Courts had been before that Regulation came into force, to take the amount of the decree or the value of the property, whichever was smaller, as the value of the suit for both purposes and the Regulation only affirmed that practice. *Govindan* vs. *Easwaran.* 12. T. L. R., 188.

13. REGULATION VI OF 1063. (*Opium and Bhang.*)

1.—*Possession of poppy seeds without licence. Conviction under Section 6 of Regulation VI of* 1063.

The legislature could not have intended to include such a harmless article as poppy seeds in the definition of "opium." The possession of such seeds (*Kasakasa*) is no offence under the Regulaion. 8. T. L. R., App. 76.

REGULATIONS.—(*Continued*).

2.—*Section 6—Conviction under. Being in possession of any preparation which, among other ingredients, contained bhang.*

Held that the definition of opium given in the Regulation, clearly indicates that the legislature did not intend to attach any criminality to the possession of any preparation which, among other ingredients, contained bhang.

9. T. L. R., App. 5.

3.—*Smuggling opium—Sec. 6 ; Regulation VI of* 1063. *Permit—Conviction on informality of.*

Accused was found in possession of a small quantity of opium which he proved he had purchased from a sub-contractor of opium. He produced a permit signed by the sub-contractor's peon, to prove the legality of his purchase.

Held that in the absence of any rules having been published, as required by Section 6 of Regulation VI of 1063, prescribing the forms of permits and the parties by whom they are to be issued, the mere fact that the permit is informal would not render accused liable to punishment under the said section, especially in the face of the evidence adduced to prove that he purchased the article in a lawful manner. 10. T. L. R., App., 27.

14. REGULATION VII OF 1063. (*Salt Revenue.*)—*Salt-earth —Collection of, whether an offence.*

Held that the collection of Salt-earth, even for purposes of manure, is an offence under the Salt Regulation in force in the state. 12. T. L. R., App. 20.

15. REGULATION VIII OF 1063. (*Tobacco Revenue*),

1.—*Importation of smuggled tobacco. Regulation VIII of* 1063, *Section* 6.

To sustain a conviction under Section 6 of Regulation VIII of 1063, it must be shewn that the tobacco in the possession of the person charged, was imported, *i e.*, was brought into this country from the sea or from foreign territory without paying the prescribed duty, or imported or brought into this country "by any route or at any port not legally sanctioned for that purpose."

As the law now stands, mere possession of smuggled tobacco —even with the knowledge that it is smuggled—does not amount to an offence punishable under the Regulation. 8. T. L. R., App. 7.

2.—*Charge of smuggling tobacoo.—Burden of proof. Presumption under Section* 6.

Where a person found in possession of tobacco, is charged with smuggling, the burden of proving that the article was smug-

gled, is on the prosecution. The presumption under Section 6 that an act of importation of tobacco was wilful, can be made only in the absence of proof to the contrary. 9. T. L. R., App, 7.

3.—*Whipping under Tobacco Regulation.*

The accused 2 in number were charged with smuggling tobacco, and; being juveniles, were sentenced to be whipped.

Held that a sentence of whipping cannot legally be passed for the offence of smuggling, the effect of the Whipping Act being simply to make whipping a part of the punishment for offences under the Penal Code. 10. T. L. R., App. 30.

16. REGULATION I OF 1064. (*Anchall*).

Section II—Offence under. Fabrication of false evidence—Forgery. (Sections 193 and 467, Penal Code.)

An Anjal delivery Peon was charged with having misappropriated a registered Anjal letter which was entrusted to him for delivery to the addressee, and having produced two receipts—found to be fabricated ones—to evidence delivery of the letter.

Held that the prisoner is guilty of the offence punishable under Section II of the Anjal Regulation (I of 1064), that the prisoner's contention that the said Regulation does not prescribe the period within which registered letters should be delivered, and, therefore, the mere delay in the delivery of the letter does not constitute an offence under the Regulation, deserves no consideration in the case, as the letter was misappropriated and not delivered at all to the addressee :

Held also that the prisoner cannot be convicted under Section 193 of the Penal Code as there is no evidence to show that the receipts were fabricated for the purpose of using as evidence in any proceeding "taken by law before a public servant", and that the fabrication of the receipts amounts to forgery under Section 467 of the Penal Code. *Sirkar* vs. *Velayudan*. 10. T. L. R., 144.

17. REGULATION I of 1067. (*The New High Court Regulation*).

SEC. 13.

1.—*Appeals against execution orders whether cognizable by a FULL BENCH.*

Under Section 13 of Regulation I of 1067 (the New High Court Regulation), appeals against orders passed in execution of decrees need not be heard by a FULL BENCH. That Section

applies only to decrees passed in original suits of the value of Rs. 2,500 and upwards. *Kochakko* vs. *Anna*. 10. T. L. R., 27.

2.—*Decree under Section 13 of Regulation I of 1067—Computation of date of.*

Held that the decrees of the High Court in cases heard under Section 13 of Regulation I of 1067, take effect only from the date they are declared in open Court after being confirmed by Royal Sign Manual and not from the date of the Judgments delivered by the FULL BENCH in such cases. *Paramesaran Nampuri* vs. *Elichee*. 11. T. L. R., 98.

18. REGULATION II OF 1067 (*Land conservancy.*)

—*Criminal trespass into Sirkar waste lands—Conviction under the Penal Code.—Sirkar's remedy.*

Held that to sustain a conviction for criminal trespass, the property trespassed into must be clearly shown to have been in the complainant's possession; and that where the property is Sirkar waste land lying unenclosed, the Government cannot maintain an action for criminal trespass under the Penal Code, but may exercise the powers vested in its executive by Regulation II of 1067. *Sirkar* vs. *Avupaccar*. 16. T. L. R., 146.

19. REGULATION I OF 1068 (*Revenue Recovery.*)

1.—*Revenue Recovery Regulation—Demand under Clause I of Section 6—Disobedience to—Whether an offence falling under Section 174 of the Penal Code.*

A defaulter failing to appear in obedience to a written demand under Section 6, Clause I of the Revenue Recovery Regulation, incurs no criminal penalty thereby. The default to appear in such cases is analogous to that of a Defendant in a civil case. By not appearing, the defaulter foregoes the opportunity of urging his objections to the demand and allows it to be right.

12. T. L. R., App. 4.

2.—*Revenue sale—By Tahsildar—&c.*

Held that the rule clearly deducible from Clauses 4, 5 & 6 of Section 34 of Regulation I of 1068 that sales held by Tahsildars are incomplete unless confirmed by the Dewan Peishcar after the lapse of 30 days from date of sale, was impliedly recognized in Government Circular No. 8063, dated 4th Mithunam 1063, and that, therefore, a Revenue sale of 1065 by a Tahsildar not having been formally confirmed by the Dewan Peishcar, was incomplete.

Held further that prior to Regulation I of 1068, no law existed requiring Dewan Peishcars to record their reasons for setting aside Revenue sales. *Dewan of Travancore* vs. *Kesavan Potti.*
12. T. L. R., 298.

20. REGULATION II OF 1068. (*Forest.*)

1.—(*Forest Regulation*)—*Offence under*—*Offence committed before the passing of the Regulation*—*Saving of.*

Held that Regulation II of 1068 cannot be given retrospective effect to, as offences committed under the previous Regulations on the same subject have not been expressly saved in the new Regulation. 11. T. L. R., App. 9.

2.—*Offence under*—*Offence committed before the Regulation*—*Regulation IV of* 1063—*Offence under*—*Saving effect of Section* 67 *of Regulation* II *of* 1068.

Held that offences falling under Section 21 of the Forest Regulation II of 1068, but committed before the passing of that Regulation, cannot be taken cognizance of by criminal courts under that Regulation.

Held further that offenders against the Forest Regulation of 1063, cannot be tried under the amended Regulation of 1068, and that the saving clause in Section 67 of the new Regulation, which repealed the old Regulation of 1063, is insufficient to keep alive the penalties incurred under the latter. *Sirkar* vs. *Kuryan.*
11. T. L. R., 149.

21. REGULATION III OF 1068. (*Suits Valuation.*)

—*Suits valuation Regulation Sec. 2.*

Held that the suits valuation Regulation Sec. 2 accepts the Court-fee valuation as the one for the purpose of jurisdiction also. *Govindan* vs. *Easwaran.* 12. T. L. R., 188.

22. REGULATION II OF 1069. (*Towns Conservancy and Improvement.*)

—*Offence under*—*Driving without light*—*Continuity of offence during the same night*—*Effect of.*

Held by a FULL BENCH that no person can be charged or convicted more than once, for driving without lights during a single night. In awarding punishment, the Court may take into consideration, as an aggravation of the offence, the circumstance that the offender continued to drive without light, in spite of police warning. 12. T. L. R., App. 16.

RELIGIOUS ENDOWMENT.

1.—*Property dedicated to Kalari* (കളരി)—*Alienation of.* Vide "*Malabar Law—Alienation—Endowment*". *Kurumpa* vs. *Kannan.* 10. T. L. R., 72.

2.—*Materials used in Religious Worship—Sale of Church property—Bishop's power to sanction sale of. Transfer of spiritual administration of Church. Consent of trustees and congregation.*

Suit by the representatives of one church for recovery of another church and its premises together with the articles used at divine worship therein. Plaintiffs' claim rests on a purchase from the members of a family who are alleged to have taken a prominent part in building and endowing the church sold.

Held that materials used in religious worship are, by all systems of law, "*extra commercium*":

That a religious endowment, whether Hindu, Christian or Mahomedan, is inalienable.

Held also that the fact that a party granted a site and contributed largely towards the building of a church, will not, in the absence of an express agreement or understanding, confer on his family any special right or interest in the church or its endowments.

Held further that a Bishop is not empowered by law to sanction the transfer or sale of a church and its endowments independently of the *Kykars* and congregation. *Francho Kathanar* vs. *Mani Kathanar.* 10. T. L. R., 12.

3.—*Person suing in respect of—Section* 511 *of the C. P. C. Trustee (swamiyar).*

Held that a person suing in respect of, or objecting, to alienations of trust property belonging to a religious or charitable institution, must have an interest in the institution. (Sec. 511 C. P. C.)

Held further that a christian, though a venpattam lessee (tenant-at-will) of a Dewaswom, cannot in any sense be treated as a person having an interest in a Hindu Dewaswom to entitle him to impugn before a Court an alienation of property belonging to the institution, by the trustee thereof. *Ulahannan* vs. *Narayanan Ilayathu.* 11. T. L. R., 102.

RELIGIOUS INSTITUTION.

—*Principles to be followed in deciding questions relating to—Status of superior of—Competency of junior representative to question alienations by the senior.*

RELIGIOUS INSTITUTION.—(*Concluded.*)

A, the Junior Swamiar of a Mattam, sues to remove B, the Senior Swamiar, from the management thereof, and to set aside alienations of immovable property made by the latter in favor of C, B and C plead that A has no right to sue.

Held that the Mattam being a Brahminical and Religious Institution, questions raised in connection with its concerns must be decided with reference either to the general principles of Hindu Law, or to any special usage or custom by which its affairs have been hitherto administered.

Held further, that B can at best be only a trustee ; that, as such, he has no beneficial interest in the property committed to his management ; that he cannot, therefore, encumber or dispose of it ; and that, hence, A is competent to question the alienation made by B and to seek his removal from management. *Pushpanjali Swamyar* vs. *Kranthatta Swamyar.* 4. T. L. R., 61.

REMAND.

1. *Sections* 336 *and* 337 (*of the old C. P. C.*) *sufficiency of recorded evidence* ; *impropriety of remand.*

Where a case has been fully investigated but the Court of first instance has failed to record its opinion thereon, the Appellate Court ought to proceed to determine the case upon the evidence if, in its opinion, there is sufficient evidence on the record for that purpose and has no power to remand the case *Bagavathi* vs. *Kalliani Amma.* 1. T. L. R., 103.

2.—*Notice to parties.*

Held that except in *ex-parte* cases, the parties must know of the remand in the court making the remand and, consequently, no special notice need be served. A proper notice affixed in the court to which the remand is made would be sufficient. *Civil Circular No.* 9 *of* 1061. 4. T. L. R., App. 23.

3.—*Remand.*

Held that Section 335 authorizes Appellate Courts to make a remand for trial, only where the lower Court's decision is on a purely preliminary point and the records of the case do not contain sufficient materials or evidence to determine the other points arising from the pleadings of the parties.

Held also that when the Appellate Court finds an issue, not raised and considered by the Court of first instance, necessary to be found for the final and complete disposal of the suit, and no

evidence on the record of the case to determine that fresh issue, it can only send down that issue for trial and finding to the first Court, and not get rid of the case altogether from its file. *Velayudan* vs. *Philipose.* 7. T. L. R., 123.

4.—*Remand. Sec.* 335 (*old C. P. C.*)

A, alleging himself to be the Karanavan of his Tarawad, sued B to invalidate an Otti executed by his Karanavan, (deceased). B, *inter alia*, denied A's Karanavanship. The Munsiff found A's Karanavanship disproved and dismissed the suit. The Zillah Judge affirmed the Munsiff's finding, but reversed the decree and remanded the suit with directions to make the real Karanavan of the Tarawad party and proceed with the case *de novo.*

Held that in no case where the judgment of the first court, on the merits, is affirmed in appeal, is such remand authorized by Section 335. *Krishnan* vs. *Mathevan.* 8. T. L. R., 46.

5.—*Secs.* 533 *and* 540. *C. P. C. High Courts' power to dispose of preliminary point in appeal against remand order.*

A remand order under Section 533 of the Civil Procedure Code, can be made only in cases where the court of first instance disposed of the suit on a preliminary point, or in such a manner as to exclude any evidence of fact essential to the determination of the rights of the parties ; but where a party failed to adduce evidence and the Original Court disposed of the suit on the available record, and the Appellate Court thinks that the defaulting party might be allowed a further opportunity to adduce evidence, the remand must be made under Section 540.

In an appeal against the order of an Appellate Court remanding a case, the High Court may enter into the merits and dispose of any preliminary point adjudicated upon by the court of first instance. 10. T. L. R., App. 3.

6.—*Joinder of additional party—Procedure.*

Where a court of first appeal remanded a case to the original court for the addition of a party and fresh trial :

Held on appeal from the order of remand, that by force of Sec, 551 of the C. P. C. an Appellate Court has the power of adding any party it may think necessary ; and that the proper course in the case for the lower Appellate Court was to have added the party itself, and then to have framed the necessary issues and remitted the case to the Original Court for findings on those issues. *Meeravunni* vs. *The Archbishop of Veerapoly.* 11. T. L. R., 180.

REMAND.—(*Concluded.*)

—*Under Section 533 C. P. C. by Appellate Court. Preliminary objection over-ruled—Reiteration, of in Special Appeal against appellate decree on merits.*

The question having been referred to a FULL BENCH whether a party who did not appeal against a remand order of the Appellate Court passed over-ruling a preliminary objection, may be allowed in special appeal against the final decree on merits of the Appellate Court, to raise the same preliminary objections:

Held by a FULL BENCH that the Remand Order in the case, being an interlocutory decree, the special appellant's omission to appeal against it, would not deprive him of the right to impeach it in the special appeal against the appellate decree on merits and to urge the preliminary objection over-ruled by the interlocutory decree. *Narayana Prabhu* vs. *Damodara Shenoi.* 11. T. L. R., 8.

RES-JUDICATA.

1. Estoppel by Judgments.
2. Adjudications.
3. Judgments on technical points.
4. Causes of action.
5. Matters in issue.
6. Parties.
    - (*a*) Same parties or their representatives.
    - (*b*) Pro-forma party.
7. Competent court.
8. Refusal of relief.

1. Estoppel by Judgments.

——"*Indivisibility of mortgage*"—*Application of the principle of.*

Two sisters having inherited from their father certain property subject to a mortgage, one of them (since deceased) sued the other and obtained a decree for partition as also for redemption of the whole property subject to her surrendering her sister's moiety on the latter's paying her share of the mortgage amount. This decree was allowed to become barred by lapse of time. Since the legal bar, the interests of the surviving sister were purchased by 2nd plaintiff who sues, under that right, to redeem the whole property, on payment of the whole debt.

Held that the plaintiff was entitled to recover only a moiety of the property on payment of proportionate share of the debt, and

that the claim to the share of the deceased sister was *res-judicata* by reason of the prior decree granting redemption which had become time-barred.

Held further that the principle that a mortgage is indivisible, is intended for the protection of the mortgagee's interests, and is inapplicable to the present case where it would, instead of helping the mortgagee, deprive him of what he had acquired a title to by lapse of time. *Kunjulichi* vs. *Thommi.* 9. T. L. R., 89.

2. ADJUDICATIONS.

1.—The decision of a suit upon the oath of one of the litigating parties is not *res-judicata* inasmuch as it is not an adjudication upon the merits. *Cunju* vs. *Krishnan.* 3. T. L. R., 56.

2.—Only judgments, based upon evidence duly recorded on the issues raised, have the force of adjudication and *res-judicata. Ramanathan* vs. *Kali.* 3. T. L. R., 59.

3.—*Decree based on oath.*

A decree passed on special oath cannot be pleaded as *res-judicata.* 10. T. L. R., 60.

4.—*Decision on erroneous view of law. Change in law. Jenmi and Tenant. Eviction.*

To apply the principle of *res-judicata,* the Court must be satisfied that there are three identities: (i) parties, (ii) property, and (iii) cause of action.

A Judgment cannot be denied the force of *res-judicata* because it expounded, and proceeded upon, erroneous views of law provided there are the three identities.

No subsequent change in the law or in the opinions of its expounders, can revive rights once finally adjudicated upon.

A Jenmi cannot sue to oust his Kanom tenant, but can only claim a renewal of the Kanom lease, unless the tenant has forfeited the tenure by allowing Michavarom and other dues to fall in arrears for 12 years continuously after demand for payment. *Kunjan vs. Keshavan.* 9. T. L. R., 129.

5. *Decision on erroneous view of law or fact in first decision. Difference of title.*

The decision of a competent court will operate as *res-judicata* in a subsequent suit, if the parties, the subject-matter, the cause of action and the issues are substantially the same in both suits

notwithstanding that the former decision may have been based on an erroneous view of the law or on a wrong assumption of facts, and that the title set up in the second suit may be different from that set up in the first. *Parameswaran vs. Muthamma.*

9. T. L. R., 92.

6.—*Order on claim petition. Effect of.*

An order passed on a claim petition has no force of *res-judicata*, its only effect being that it will be conclusive on the parties thereto, and as regards the subject matter thereof, if unquestioned for a year from the date of its passing. 10. T. L. R., 37.

7.—*Decree against Karunaven of Marumakkatayam Tarawad as defendant—Applicability of the rule of res-judicata to pleas—Absence of specific issue in previous suit—Decision on erroneous view of law or fact—Effect of, on subsequent suit. Civil Procedure Code (Regulation II of 1065), Section 9. Clause V and Section 96. Section 26 whether applicable to Malabar Tarawads. Objection taken in appeal under the old Civil Procedure Code (Regulation II of 1037), and allowed—Impugnment of, in subsequent suit.*

Held in appeal (i) That under Section 9 of the Civil Procedure Code (Regulation II, of 1065, the rule of *res-judicata* applies to claims as well as to pleas. The trial of the issue prohibited under this section, may be one raised by the plaint, or the written statement of the defendant, or by the contention of the defendant raised at the first hearing of the suit. The issue need not necessarily be raised by, or founded upon, the pleadings of the plaintiffs.

(ii) That a decision in favor of, or against, the Karanaven of a Tarawad, in a suit *bona fide* prosecuted or defended, binds the whole Tarawad, unless and until fraud or collusion in obtaining that decision is established.

(iii) That the mere fact that no specific issue was raised in the former suit, will not prevent the operation of the rule of *res-judicata*, if in substance the matter was heard and determined therein.

(iv) That Section 332 of the old Civil Procedure Code (Regulation II of 1037), did not prescribe that mode in which objections were to be taken to the lower courts' judgments; and where the final judgment shows that a certain objection was taken, though not in writing, and allowed by the final Appellate Court, the decision with respect to the objection cannot be impugned in a subsequent suit, as based on an objection improperly taken and wrongly allowed.

RES-JUDICATA.—(*Continued.*)

And (v) That the decision of a competent court, though based on an erroneous view of law or fact, will operate as *res-judicata* in a subsequent suit, provided the other conditions exist.

Held on Review affirming the foregoing rulings (i) and (ii).

That the phrase " right claimed" in explanation V of Section 9 of the Civil Procedure Code (Regulation II of 1065), applies to *bona fide* claims, as well as to *bona fide* defences.

And that a decree properly obtained against a Karanaven in a suit in which he was defendant, has the same legal effect for purposes of *res-judicata*, as a decree against him in a case in which he was plaintiff.

Held further that Section 26 of the Civil Procedure Regulation has no application to cases of Malabar Tarawads. *Govindan* vs. *Govindan.* 11. T. L. R., 112.

8.—*Compromise—Res-judicata—Estoppel by representation—Effect of, in subsequent litigation—Civil Procedure Code, Section* 9.

Held that no decree based on a compromise could operate as *res-judicata* in a subsequent suit, as such a decree is not an adjudication on the merits, on the disputed points, under Section 9 of the Civil Procedure Code.

The effect of a false representation made by a party in a former litigation should be limited to the extent of prohibiting the party making it from seeking, in a subsequent suit, to invalidate what has been, on the strength of it, done by the other party in respect of the subject-matter of the litigation in the course of which that representation was made or which was determined in accordance with that representation.

The distinction between Estoppel by Representation and *res-judicata* pointed out. *Kandan* vs. *Ittikkali.* 12. T. L. R., 165.

3. JUDGMENTS ON TECHNICAL GROUNDS.

1.—*Decision on preliminary point.*

When a suit is dismissed on a preliminary ground, the opinions expressed on the merits would not operate as *res-judicata* against the maintenance of a second suit. *Gnanamani* vs. *Kunjumarthandan.* 8. T. L. R., 158.

2.—*Decision on record on party's default to produce proofs or witnesses (Section* 135 *of the Civil Procedure Regulation II of* 1037).

A decision on the record under Section 135 of the Civil Procedure Regulation II of 1037 has all the legal effects of an

RES-JUDICATA.—(*Continued.*)

adjudication on the merits for purposes of *res-judicata*. *Keshavan* vs. *Krishnan*. 12. T. L. R., 194.

4. Causes of action.

1.—The obtaining of a money decree, upon an hypothecation bond is no bar to a fresh suit for the enforcement of the obligee's right of lien on the property hypothecated. *Ramarkishna Aiyan* vs. *Rama Aiyan*. 3. T. L. R., 29.

2.—*Dismissal of a suit for default.*

The dismissal of a suit for default to adduce evidence by the plaintiff. in which the defence was that the cause of action had not arisen and that the court had no jurisdiction, cannot be a bar to a subsequent suit in the proper court, when the cause of action actually arises. *Velayudan* vs. *Kunjukali*. 3. T. L. R., 39.

3.—*Cause of action—Mesne profits.*

A and B obtain a decree against C for recovery of certain property with mesne profits. They subsequently sue also C, D, E and others, the alienees of C to recover from them mesne profits on the portions of the property held by them, during the pendency of the former suit, from the date of their alienation.

Held that the claim against C is *res-judicata* inasmuch as a decree had already been obtained against him on the same cause of action for the same relief, but the claim against D, E and others, the alienees, *pendente lite* is not open to that objection because they were no parties to the former suit.

Held further that A and B have a cause of action for profits against all those who hold possession of their properties since the decree in the former suit did not deal with that claim. *Madathi* vs. *Ninan*. 6. T. L. R., 121.

4.—*Entertainment of the plea in special appeal—Change of form of action—Effect of, on the plea.*

The plea of *res-judicata* taken and determined in the original court, may be entertained in special appeal, even though it was not urged in the regular appeal.

Where a suit for cancelment of an attachment was based on plaintiff's claim to the property under a division, and the issue as to division was considered and decided against him, and a second suit for the same purpose was instituted on the ground that the attached property is plaintiff's inheritance from his father ;

Held that it was open to plaintiff to have based his title in the former suit, on division or inheritance; that it was plaintiff's right to possession, by whatever title it may be sustainable, that was heard and determined in the former suit; and that the mere change of the form of action will not save the present claim from being *res-judicata* by the decision in the former suit. *Cherian* vs. *Narayanan Nampuri.* 11. T. L. R., 154.

5.—*Prosecution of suit—Omission of grounds of claim—Fresh suit.*

Held that a party is bound to bring forward his whole case in respect of a matter in litigation and open to him upon the points for decision in the suit. He cannot abstain from relying upon, nor abandon, a ground of claim which is in question and proper for consideration and decision in the suit, and afterwards make it a fresh cause of a fresh suit in respect of the same subject-matter. *Regupathi Aiyan* vs. *Krishna Aiyan.* 7. T. L. R., 171.

6.—*Satisfaction of decree—Cause of action.*

The defendant had a money-decree in O. S. No. 917 of 1059 against the plaintiff. In execution it was agreed that defendant should receive 350 fanams in full satisfaction of the decree. Plaintiff executed a mortgage-deed to the defendant's wife for this amount and also for 250 fanams which he was to borrow. But the defendant instead of certifying satisfaction of the decree, recovered the whole decree amount. Defendant's wife sued the plaintiff and recovered the whole mortgage amount. Plaintiff sued the defendant and his wife to recover the said 350 fanams, but it was dismissed on the ground that there was no cause of action. The present suit is against the defendant alone to recover the amount realized in execution of O. S. 917 of 1059 together with interest.

Held that, in the present condition of the bar of the Munsiff's Court, the interests of justice will be promoted if the courts look to the real nature of the claim rather than to the form in which it is put forth.

Held also that the plaintiff's cause of action in this case, is the defendant's failure to certify satisfaction of the decree and that the plaintiff is entitled to claim as damages, what he has lost by the execution of the said decree.

Held further that the mere accident that the defendant is a party to the previous suit, cannot make the decree in one *res-judicata* with regard to the claim in the other, the causes of action being entirely different. *Kumaren* vs. *Syed Muhammed.* 7. T. L. R., 59.

RES-JUDICATA.—(*Continued.*)

5. MATTERS IN ISSUE.

1.—*Res-judicata.*

Held that it is a fundamental rule of law that the decision of a Court of competent jurisdiction on a point directly and substantially before it, binds the parties thereto, and debars them from contesting the same point in a subsequent suit between them. *Nagalingam* vs. *Raman.* 6. T. L. R., 94.

2.—*Absence of specific issue.*

Held inter alia that the mere fact that no specific issue was raised in the former case, will not present the operation of the rule of *res-judicata,* if in substance the matter was heard and determined thereon. *Govindan* vs. *Govindan.* 11. T. L. R., 112.

6. PARTIES.

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES IN INTEREST.

1.—*Res-Judicata.*

Held that where a plea of *res-judicata* is set up, the main point to be considered is whether the matter in question was directly and substantially in issue between the same parties and was finally adjudicated upon in the previous suit; and it makes little difference whether the parties were marshalled in the one case differently from the other, so long as they had the fullest opportunity of contesting the point decided. *Nilakandan Namburipad vs. Kunjirar.* 6. T. L. R., 100.

2.—*Malabar Tarawad. Decree against junior members.*

Held that the decree obtained against the junior members of a Malabar Tarawad, does not operate as *res-judicata* against the Tarawad, *i. e.*, against its other members.

Held also that the sale of Tarawad property held in execution of a decree against the junior members, cannot affect the interests of the Tarawad in that property. *Raman* vs. *Krishnan.* 7 T. L. R., 137.

3.—*Decree against manager of Malabar Tarawad.*

A decree obtained against a mere manager of Malabar Tarawad, who had not the full rights and privileges attaching to the position of a Karanaven and who is shown to have acted in breach of his duty, in a suit to which the Karanaven was not a formal party and had no opportunity of proving the claim of his Tarawad, cannot operate as *res-judicata* against a subsequent

suit based on the same claim and instituted by representatives of that Tarawad. *Pothen* vs. *Parameswaran.* 8. T. L. R., 33.

4.—*Decree against Karanaven of Marumakkatayam Tarawad—Binding effect of—on members thereof.*

Held that a Judgment passed in a suit to which the Karanaven of a Marumakkatayam Tarawad is a party, will bind all the other members thereof, though the latter may not be the parties in the record.

Held also that where the cause of action in a suit is substantially the same as in a previously decided case and the Karanaven of the plaintiffs in the former was a party in the latter, to hold that the decree in the first case would not operate as *res-judicata* against the subsequent suit, would be a virtual repeal of the law of *res-judicata*. *Sankaran* vs. *Raman.* 8. T. L. R., 62.

5.—*Decree in suit by Karanaven.*

Suit to set aside a hypothecation of an elephant by the Karanaven of a Tarawad and the decree obtained thereon, on the grounds that the hypothecation was bad for want of consideration and that the decree in question was obtained during pendency of a suit to remove the Karanaven from his office. The defence contends that the question of consideration is *res-judicata* by a decree in a suit brought by the Karanaven himself to set aside the hypothecation on the ground that it had no consideration.

Held that the suit by the Karanaven having been brought as Karanaven and dismissed on the merits, the decree therein operates as *res-judicata* on the question of consideration. The fact that if, instead of the Karanaven, his Anandraven (present plaintiff) had brought the suit, the *onus probandi* would have been on the creditor and not on the debtor (the Karanaven) could not deprive the decree of its legal validity and character. *Velayudan* vs. *Velayudan.* 12. T. L. R., 87.

6. (*b*) PRO-FORMA PARTY.

—*Party pro-forma. Failure of identity as to subject matter.*

Suit by plaintiffs, Kysthanakkar of a Dewaswom to have a Venpattom lease, granted by the 1st to 2nd defendant cancelled on the ground of the former's incompetency to do so. The Zilla Judge, in effect, held that the 1st defendant was precluded by a former decree to which he was party, declaring plaintiffs alone to be competent to grant leases on behalf of the Dewaswom, and allowed the plaintiff's claim.

RES-JUDICATA.—(*Continued.*)

Held by the FULL BENCH, on reference, that the 2nd defendant, being the person who claims to retain the property in virtue of the lease, has a substantial interest in the present suit, the first defendant being a party *pro-forma*; and that the 2nd defendant being no party to the previous decree, and the property now in suit being different from the subject-matter of the former suit, the judgment in the prior suit could not operate as a bar against the 2nd defendant who is the real defendant in the case. The fact that 1st defendant is a formal party to the present suit, could not alter the case. *Iraviyar Namburipad* vs. *Narayanan Moothathoo.* 9. T. L. R., 86.

7. COMPETENT COURT.

1.—The decision of a court, in a former suit, on the same cause of action, between the same parties, or between parties under whom they claim, is no bar to a subsequent suit, unless the court, that decided the former suit was competent to try the subsequent suit. *Iyappen* vs. *Krishnan.* 3. T. L. R., 60.

2.—*Decision by inferior Court when operative as res-judicata to suit brought in superior court.*

Held inter alia that the fact of a decision being by an inferior court would not preclude its being *res-judicata* upon all points decided thereby, and raised in a subsequent suit filed in a superior court, between the same parties and in respect of the same subject-matter, provided the inferior court was competent to try the case at the time it recorded its decision. The fluctuations in the price of property and the consequent changes of pecuniary jurisdiction cannot be allowed to revive claims once finally adjudicated. *Aiyappen* vs. *Kela.* 11. T. L. R., 208.

8. REFUSAL OF RELIEF.

—*Relief prayed for, in former suit, but as to which the decree is silent.*

Held that a decree which does not grant a relief expressly prayed for, would operate as *res-judicata* against a subsequent suit asking for the same relief. *Narayanan* vs. *Madhava Naicken.* 11. T. L. R., 153.

RESTITUTION OF CONJUGAL RIGHTS.

—*Restitution of wife—Cause of action.*

Held that a husband seeking for restitution of an adult wife, has no cause of action against persons who are alleged to merely shelter her but not to restrain her actions. *Abdulkadir* vs. *Pathummal.* 11. T. L. R., 163

RETRIAL IN CRIMINAL CASES.

1.—*District Magistrate's power to order. in a case of dismissal or discharge.*

Held that a District Magistrate has no power to direct further enquiry by any subordinate Magistrate, in a case of improper dismissal or discharge, even though the case is one exclusively triable by the Court of Session. The District Magistrate should, in such cases, report the matter for orders to the High Court on whom alone the power of directing further enquiry has been conferred. 11. T. L. R., 27.

2.—*Expediency of ordering in cases of conviction.*

Held that it is inexpedient to direct a retrial where the irregular and illegal procedure in the case has not prejudiced the accused, nor affected the interests of public justice.

12. T. L. R., App. 21.

3.—*Inexpediency of ordering where witnesses have retracted.*

Held inter alia that where, on a grave charge, all the prosecution witnesses have retracted their statements made before the committing magistrate, it is inexpedient to order a fresh trial.

12. T. L. R., App. 34.

RETURNS.

See Criminal Circulars Nos. 22 of 1060, 5 of 1061 and 11 of 1061. 4. T. L. R., App. 8, 10 & 12.

REVENUE.

——*Jurisdiction of Civil Courts in cases relating to public revenue.*

Held that Civil Courts can take cognizance of suits relating to public revenue, if the revenue executive officers could be shown to have acted contrary to any existing right acquired under the laws promulgated by the Government in its legislative capacity.

8. T. L. R., 26.

REVENUE SALE.

See cases under "Regulation I of 1068."

1.—*Prior charge on land—Sale for arrears of, free of prior encumbrances not valid unless the arrears relate to the land sold.*

Held by the FULL BENCH that revenue being the first and paramount charge on lands, a sale for arrears of revenue, is free of all charges.

REVENUE SALE.—(*Concluded*).

Held further, that prior encumbrances are not effected by the sale, if the arrears are not due on the land sold. *Narayanan* vs. *Channen.* 4. T. L. R., 81.

2.—*Immovable property—Absence of 30 days' notice.*

A revenue sale of immovable property is invalid, if held without giving at least 30 days' notice. 10. T. L. R., 40.

REVIEW.

SEE CASES UNDER "CIVIL PROCEDURE CODE." Secs. 569 to 576.

REVISION IN CRIMINAL CASES.

SEE "CRIMINAL PROCEDURE CODE, SEC. 326."

ROMO-SYRIANS.

1.—*Daughter's share in father's property. Dower.*

Held that according to the customary law by which the parties (Romo-Syrians) are governed, daughter's share equally with the sons, in their father's property, and that no share is allowed to them if they have received their dower or marriage portion. *Murayas* vs. *Gomerz.* 6. T. L. R., 26.

2.—*Inheritance—Mother's status and rights as heir to deceased son—Syrian Christian law as laid down in S. A No.* 180 *of* 1063—*Inapplicability of.*

A Romo-Syrian died intestate leaving him surviving a son by his first wife, a widow (his third wife) and a son by her. This son died a minor shortly after his father's death. The widow sues *inter alia* for a half share in her husband's estate as her deceased son's heir.

Held that the decision in S. A. 180 of 1063 ruling that, among Syrian Christians, daughters and widow have no right of inheritance, when there are sons, is inapplicable to the present case in which the parties are Romo-Syrians.

Held also that the law of succession in all Christian countries places the mother of a deceased person after the father, on failure of lineal descendants, in the line of succession. That she ranks with the collateral heirs of the deceased and takes equally with them. And that the plaintiff, therefore, is entitled to take an equal share of her son's property with the defendant, *i.e.*, an one-fourth share in the properties, movable and immovable, left by her husband. *Chakko* vs. *Antha.* 12. T. L. R., 124.

SADANAM.

—Evidence.

A Sadanam written by a Tahsildar to his official superier can not be treated as evidence of the facts stated therein. *Irayimman* vs. *Kumaran.* 12. T. L. R., 91.

SALE.

SEE CASES UNDER "HINDU LAW."

SEE CASES UNDER "MALABAR LAW."

1.—*Dispossession—Purchase money.*

A vendee of immoveable property, of which he has been dispossessed by a third party cannot sue his vendor for the purchase money, in the absence of a covenant for title, unless fraud or misrepresentation be brought home to the vendor. *Sirkar* vs. *Krishnan.* 1. T. L. R., 68.

2.—*In market overt.*

A sale in market overt is not absolute. The property in stolen goods, sold at the market overt does not pass to the vendee. 3. T. L. R., App. 30.

3.—*Equity of redemption.*

An equity of redemption is legally capable of sale as any other right. *Raman* vs. *Punnavanom.* 3. T. L. R., 23.

4.—*Effect of, when whole purchase money has not been paid. Procedure—Taking of evidence on question of fact.*

A sold certain property to B subject to a mortgage with possession which had been granted to C. A year after the said sale, A grants another sale of the same property to C. Thereon, B sues to enforce his sale, and C in answer contends *inter alia* that, as the purchase-money has not been wholly paid by B, his sale is invalid.

Held that a sale is not incomplete because a portion of the consideration agreed upon was not paid at the time of the execution of the deed. The due execution, registration and delivery of the deed of conveyance, make the transfer of ownership complete, and nothing short of an express legally valid cancellation by the vendor and purchaser, or a reconveyance by the latter, affects that vested ownership. The purchaser is none the less owner because the purchase-money remains unpaid, though he may not be entitled to recover possession except on condition of first paying the purchase-money.

SALE.—(*Continued*).

If in the opinion of a Judge, a question of fact is immaterial for the decision of a case, the evidence bearing on it ought to be left unconsidered and the question undetermined. But if it is in any way material—though not directly—the evidence ought to be properly weighed and the conclusion distinctly recorded. *Varki* vs. *Cherian*. 9. T. L. R., 107.

5.—*Vendor's lien on property after sale thereof and acceptance of promissory note for consideration.*

Where a vendor who, in lieu of the purchase-money due for a sale granted to the vendee, accepted from him a promissory note for the amount, sued for the recovery of that money, and it was found that there was sufficient evidence to shew that the promissory note was accepted as a substitute for the consideration money:

Held that the plaintiff (vendor) had lost his equitable lien on the property sold, and that he was entitled only to a decree against the general assets of the vendee. *Jeganatha Row* vs. *Paulo*.

10. T. L. R., 1.

6.—*Essential constituents of. Failure to pay purchase-money—Effect of.*

The essential constituents of a contract of sale are (i) delivery of the deed of sale and (ii) payment of the purchase-money.

Where, therefore, a party to a contract of sale, fails to pay the purchase-money, and the would-be vendor, consequently, refuses to deliver the sale-deed, though registered, the former cannot sue to enforce the contract. *Parvathi* vs. *Krishnan*. 10. T. L. R., 39.

7.—*Rescission of, at suit of purchaser—Fraud—Refund of purchase-money—Principle of 'Caveat Emptor'—Applicability of.*

Held that a contract of sale brought about by active concealment and fraud on the part of the vendors, is voidable at the option of the purchaser.

Held further that, in such cases, where the relief is sought on the ground of fraud, the maxim '*caveat emptor*' does not apply, and the purchaser is entitled to recover the purchase-money paid by him. *Geevergese* vs. *Abraham*. 11. T. L. R., 84.

8.—*Promissory contract of—Completed Agreement—Specific performance against subsequent purchaser—Presumption of fraud from purchaser's knowledge of the agreement. Damages for breach of agreement—Breach of contract on difference as to the currency in which the consideration was to be paid. Document stamped under Sections 35 and 36 of the Stamp Regulation—Evidence—Order under Sections 35 and 36. Compulsorily registered deed—Defect in schedule. Damages—Items of.*

SALE.—(*Continued*).

A document stamped under Sections 35 and 36 of the Stamp Regulation, is admissible in evidence under para 2 of the section, though it was illegally stamped:

And it is not open to a Civil Court to consider in a Civil Suit the legality or otherwise of a Dewan Peishcar's order under Sections 35 and 36 of the Stamp Regulation.

Held also that a letter simply promising to execute a conveyance of immovable property, does not require registration; and that it is admissible in evidence in spite of its compulsory registration:

And that the validity of a registration compelled by order of a Court under Part XII of the Registration Regulation, cannot be impeached on the ground that the schedule of the property covered by the document, was not supplied by the executant.

Where, under a letter addressed to another, a party promised to sell certain property to the addressee within a specified date, for a specified consideration, and acknowledged receipt of the would-be vendee's portion of the expenses of stamp and registration agreed:

Held that there was a completed contract of sale entitling the promisee to the execution of the sale-deed:

And that where, in such a case, a question arose as to the currency in which the consideration agreed was to be paid, the agreement not being specific on the point, the promisor was bound to give the promisee the option of paying the sum in the currency of higher value, before rescinding the contract.

Held further that it is discretionary with Courts to decree specific performance of a contract; that in the absence of substantial loss sustained by plaintiff, specific performance cannot be decreed as against a person who purchased for value the property in litigation, subsequent to the agreement sued on; that the mere fact that the purchaser had knowledge of the agreement, is insufficient to hold that he acted fraudulently or dishonestly; and that the judicial expenses incurred by plaintiff subsequent to the date of the sale impugned, cannot be taken into consideration in determining the amount of plaintiff's loss.

Held further that the plaintiff in the case is entitled to damages for breach of contract and that, in determining the measure of damages, the following items could not be considered:—

(i) Interest on the amount deposited in Court by plaintiff unnecessarily, as all that he was bound to do was to declare his willingness to perform his part of the contract.

SALE.—(*Concluded*).

(ii) The expenses of registering the letter forming the agreement sued on, as the registration of the same was unnecessary.

(iii) Expenses of sending notices of the intention to sue, as such expenses are not allowed except in cases where the law requires such notices to be given. *Manakavalaperumal Asari* vs. *Govinda Kymal*. 11. T. L. R., 131.

9.—*Breach of agreement of sale—Intending purchaser's lien—Suit for recovery of advance—Limitation Regulation II of* 1062, *Article* 96.

Held that there is no rule of law under which a lien could be created on immoveable property covenanted to be sold for the money advanced by an intending purchaser.

And that a suit for recovery of the amount advanced on an agreement to convey immovable property to an intending purchaser is really an action for damages for breach of contract in writing and registered, and, therefore, falls under Article 96 of the Limitation Regulation II of 1062 which prescribes a period of 6 years from the date of such breach. *Easwaran* vs. *Valayudun*.

11. T. L. R., 177.

SALE FOR ARREARS OF REVENUE.

—*Revenue sale—invalidity of*,

A revenue sale of immoveable property, is invalid, if held without giving at least 30 days' notice. *Makoji* vs. *Abasali*.

10. T. L. R., 40.

SALE IN EXECUTION OF DECREE.

SEE CASES UNDER CIVIL PROCEDURE CODE.

Sec. 224 and Secs. 283 to 316.

SAMUHAM.

See "Civil Procedure Code, Secs. 415 and 417.

SANCTION FOR PROSECUTION.

1.—Though the law (SECTION 470 old Cr. P. C.) does not make the mention of the name of the accused indispensable, yet such name should be given unless it is quite clear as to the person referred to E. G.—If an application is made by petition "for permission to prosecute A and B for giving false evidence under such and such circumstances" and the Judge or Magistrate says " I grant permission as asked" no ambiguity arises. In every case it is the duty of the

Judge or Magistrate to see that permission is so given as to preclude ambiguity and consequent waste of time. A copy of the sanction given should always form part of the record. *Cr. Cir. No.* 10 *of* 1060. 4. T. L. R., App. 4.

2.—*Sanction when and how to be given.*

Held that when application for sanction to prosecute is made, the officer granting it must satisfy himself that there is a good *prima facie* case to justify the prosecution and the order must be self-explanatory. 7. T. L. R., App. 33.

3.—*Effect of defective sanction.*

Held that no irregularity or error or defect in any proceeding before a trial can vitiate or invalidate a judgment legally recorded in such trial, is a well-known rule of the law of procedure, unless that irregularity or error (occasioned by the vagueness of the section) has prejudiced the prisoner. 7. L. T. R., App. 40.

4.—*For offences under Sections* 426, 447 *and* 193 *of the Penal Code. Previous sanction to prosecute, not necessary.*

Held that the order of the Magistrate will not cover a prosecution under any of the sections referred to, *viz.*, 426, 447 and 193, and that the prosecution under Sections 426 and 447 need not have the previous sanction of any Criminal Court. 8. T. L. R., App. 59.

5.—*For false complaint.*

An order under Section 211 of the Criminal Procedure Code, to prosecute a complainant for preferring a false charge, is illegal only where the order is given by a Court, without holding any judicial enquiry or examining any witnesses cited for prosecution, but not in such cases as where most of the witnesses cited by complainant have been examined and a few not, because they failed to appear notwithstanding compulsory processes issued by the Court. 9. T. L. R., App. 41.

6.—*Offence committed by public servant, in private capacity—Prosecution—Sanction.*

Held that government sanction is not necessary for the prosecution of public servants for offences not committed in their official capacity. 11. T. L. R., App. 10.

7.—*Forged document not filed in Court. Sanction for prosecution in respect of.*

A Magistrate is competent to entertain a complaint in respect of a document fabricated for purposes of evidence, without previous

SANCTION FOR PROSECUTION.—(*Concluded*).

sanction of a Court, where the document has not been filed in any Court. 9. T. L. R., App. 30.

8.—*Forgery—Document produced before Registrar.*

Held that a Registrar, under the law in force, is not a Court within the meaning of Section 173 Criminal Procedure Code; and the Registrar's sanction is not necessary for Criminal Prosecution in respect of a forged document produced before him.

11. T. L. R., App. 27.

9.—*Registered document—Forgery—Document filed in evidence in suit—Whether prosecution expedient until disposal of suit.*

Held that a Registrar's sanction is unnecessary for prosecution of an offence of forgery alleged to have been committed in relation to a document registered by him.

Held further that where a charge of forgery is brought up in respect of a document registered, but the document is tendered in evidence in a Civil Court, no sanction for prosecution for the offence of forgery should be given, until the real character of the document is ascertained by the result of the suit wherein the document is filed. 11. T. L. R., App. 33.

10.—*Departmental Enquiry—Document produced in.*

Held that no sanction of the Executive Officer before whom a document is produced in a departmental enquiry, is necessary for the prosecution on a charge of forgery in respect of such document.

8. T. L. R., App. 17.

11.—*Prosecution for offence under Sec.* 173.

Held that though the Court would not lay it down as absolutely necessary that under Sec. 357 Cr. P. C. a preliminary enquiry should be held in all cases falling under Sec. 173 of that Code, where it is possible that an explanation may be offered by the offender, he should be heard before being prosecuted.

12. T. L. R., App. 15.

SECURITY.

Liability of surety—Extent of—Sirkar's right to attach and sell lands tendered as security—Change of office—Construction.

S, the senior male member of a Malabar family, with the assent of his Seshakars, tendered his family property as security to Sirkar for securing the office of Chandram to V. The latter embezzled Sirkar money while holding the office of Superintendent of

SECURITY.—(*Concluded*).

Granary. Revenue authorities, consequently, attached and sold the property of the surety. Plaintiff who purchased the property at the Revenue sale is resisted by the defendant who claims to hold under previous mortgage executed in his favor by a member of the surety's family. He further impugnes the validity of the Revenue sale on the ground that the liabilities were incurred while the said individual was acting as Superintendent of the Granary, and that hence neither the surety nor his property is chargeable, the guarantee by the surety embracing simply the office of Chandram.

Held that the Sirkar has no lien on the lands in dispute for liabilities incurred by V in his capacity of Granary Superintendent and that the purchase at the Revenue sale conferred no valid title on plaintiff.

Held also that the words in the agreement of surety " or of any other office to which he may be transferred," must be construed to mean that the surety was intended to be extended only to such other offices as did not involve greater risks and responsibilities than those expressly guaranteed at the time—that as a rule, change in the nature of offices or employment of the person whose good conduct is guaranteed, relieves the surety from his engagement. *Kunjan* vs. *Adithan Potti.* 4. T. L. R., 30.

——See also "Limitation-art 100." 12. T. L. R., 116.

SENTENCE.

i. General Cases.
ii. Capital Sentence.
iii. Fine.
iv. Imprisonment.
(*a*) *Imprisonment generally.*
(*b*) *Imprisonment and fine.*
(*c*) *Imprisonment in default of payment of fine.*
v. Whipping.

i. General Cases.

1.—*Attendance of prisoner necessary in enhancing sentence of imprisonment. See Criminal Circular No.* 8 *of* 1060. 4. T. L. R., App. 3.

2.—*Suspension of sentence pending appeal. Execution of, when confirmed.*

In cases in which District Magistrates suspend the sentence pending an appeal and release the appellants on bail, they should, on confirmation of the sentence, take immediate steps to execute the same; and in such cases the best course is not to deliver judgment in the absence of the appellant. 4. T. L. R., App. 7.

SENTENCE.—(*Continued*).

3.—*Suspension of Sentence—Vide " Criminal Procedure Code. Sec.* 321.
5. T. L. R., App. 19.

4.—*Mode of execution of sentence after suspension pending appeal pointed out. Criminal Circular* 3 *of* 1062. 6. T. L. R., App. 11.

5.—*Application to stay execution of sentence. Suspension of sentence—Section* 281 *clause* 2) *of the Criminal Procedure Code—Non-bailable cases.*

The suspension of the rigorous portion of the sentence was not, in the eye of the law, the suspension of the sentence within the meaning of Section 281 (Clause 2) of the Criminal Procedure Code.

In non-bailable cases, the Appellate Courts should sparingly use the power of suspending sentences in part.

8. T. L. R., App. 73.

II. CAPITAL SENTENCE.

Sentence of death. The law does not render it obligatory on a Sessions Court in all cases to pass a sentence of death on a conviction for murder, and it is competent to a Sessions Judge on his own authority, to pass in the first instance, a sentence of imprisonment for life, if in the circumstances of any particular case, a capital sentence should appear unsuitable. 2. T. L. R., 83.

1.—No sentence of fine should, as a rule, be suspended. When the sentence is suspended pending an appeal and afterwards confirmed, an order should be sent to carry out the sentence forthwith. *Criminal Circular* 16 *of* 1060. 4. T. L. R., App. 6.

III. FINE.

2.—*Fines Criminal—Realization of. See Criminal Circular* 10 *of* 1062.
6. T. L. R., App. 13.

3.—*Sentence of. Commutability into imprisonment.*

A sentence of fine is not commutable into one of imprisonment, in default of payment of fine. 8. T. L. R., App. 29.

4.—*Default of payment of. Imprisonment.*

Section 309 of the Criminal Procedure Code read with Section 64 of the Penal Code does not render it imperative to record a sentence of imprisonment in default of payment of fine, in every case. 8. T. L. R., App. 10.

IV. IMPRISONMENT.

(*a*) *Imprisonment generally.*

1.—*Pending trial.* On conviction for an offence under the Penal Code, the Court is bound to award some punishment how light

SENTENCE.—(*Continued*).

soever it may be. The imprisonment undergone pending the trial may be taken into consideration in awarding punishment, but cannot obviate the necessity of passing a sentence on conviction.
3. T. L. R., App. 29.

2.—There is no law or custom exempting Brahmins from liability to rigorous imprisonment. *Sirkar vs. Agoram Singh.*
3. T. L. R., 63.

3.—*Females.*

Females are liable to rigorous imprisonment. It does not necessarily include fettering. 3. T. L. R., App. 32.

4.—*Calculation of imprisonment. Effect of another trial.*

A sentence of imprisonment should be made to take effect from its date and the fact that the prisoner had to undergo another trial would not operate as a suspension of the sentence.
7. T. L. R., App. 71.

5.—*Imprisonment—for default of furnishing security under Section 497 of the Criminal Procedure Code. Interpretation of Sec. 317 Criminal Procedure Code.*

Imprisonment for default of furnishing security under Section 497 is not imprisonment within the meaning of Section 317 of the Criminal Procedure Code, and such imprisonment may run concurrently with a substantive award of imprisonment.
8. T. L. R., App. 77.

6.—*Under Section 29 of the Police Regulation—Effect of.*

Held that imprisonment awarded under Section 29 of the Police Regulation extinguishes the fine and that, under this section, imprisonment could be awarded only after the Magistrate is satisfied that the fine cannot be levied. 8. T. L. R., App. 79.

7.—*Imprisonment. Rigorous—Females—Offence under Section 392 Penal Code.*

Held that under the rulings of this court, females are not exempt from rigorous imprisonment and that, therefore, the award of simple imprisonment to a woman convicted under Section 392 of the Penal Code is illegal 10. T. L. R., App. 41.

(*b*) *Imprisonment and fine.*

Imprisonment and fine—Sections 457 and 390 Penal Code. The better construction to be put upon the concluding portions of these and the kindred sections of the Penal Code is that the award of imprisonment is imperative in convictions under these sections and

that fine may also form part of the sentence at the option of the Court. 1. T. L. R., App. 13.

(c) *Imprisonment in default of payment of fine.*

1.—*Sentence of imprisonment for default of payment of fine—Payment in whole or in part of such fine—Procedure to be adopted. Criminal Circular* 10 *of* 1058. 2. T. L. R., App. 11.

2.—*In default of fine.* When a prisoner is sentenced to fine only, the term of imprisonment legally awardable in default of payment of fine, is one-fourth of the maximum term of imprisonment awardable for the offence. 3. T. L. R., App. 31.

v. WHIPPING.

WHIPPING ACT. See criminal reference Full Bench, decided 19-3-80.

SECTION 3.

1.—*Previous conviction.*

Held that to warrant the infliction of the punishment of whipping in addition to imprisonment, the previous and the subsequent convictions must be of the same offence. 1. T. L. R., App. 1.

2—*Procedure—Period of infliction.*

Held that the prisoner should at once be sent to the Jail where the sentence of whipping shall be carried out under Sections 311 and 312 of the Criminal Procedure Code. *Held* also that as regards the time during which the sentence is to be carried out, the provisions of Section 17, Regulation III of 1054, and Section 310 of the (old) Criminal Procedure Code should be followed.

1. T. L. R., 38.

3—*Section* 310 *Criminal Procedure Code. Sentence of*

A Judge has no power to direct a sentence of whipping to be carried out after the expiry of a sentence of two years' rigorous imprisonment. The sentence must be carried out in accordance with the provisions of Section 310 of the Code of Criminal Procedure. 8. T. L. R., App. 33.

4—*In addition to imprisonment—Sentence of—Old offender.*

To warrant the passing of a sentence of whipping in addition to imprisonment, in the case of an old offender, the subsequent conviction must be for the *same* offence as that of which the accused was previously convicted. 10. T. L. R., App. 11.

SENTENCE.—(*Concluded*).

5.—*Offence under Regulation VIII of* 1063 (*Tobacco Regulation.*)

The accused, two in number, were charged with smuggling tobacco, and, being juveniles, were sentenced to be whipped.

Held that a sentence of whipping cannot legally be passed for the offence of smuggling, the effect of the Whipping Act being simply to make whipping a part of the punishment for offences under the Penal Code. 10. T. L. R., App. 30.

6.—*Sentence of, in conjunction with imprisonment. Abatement of the sentence of whipping if unexecuted within* 15 *days. Absence of Original Judgments.*

Where an accused was sentenced to whipping with rigorous imprisonment and the execution of the sentence of whipping was delayed for over 15 days from the date of sentence, though no appeal was preferred against that sentence;

Held that by the efflux of time the sentence of whipping has become inoperative:

And that the absence of original judgment was no reason for postponing the execution of the sentence of whipping. The fact of the infliction of whipping could have been noted in the diary.

10. T. L. R., App. 19.

7.—*Sentence of Whipping—Substitution of, for other punishment by Appellate Court—Whether legal—Section* 290 *of the Criminal Procedure Code.*

Held by a FULL BENCH that, by force of Section 290 of the Criminal Procedure Code, the Appellate Courts have no power to pass sentences of whipping in lieu of any other sentence passed by the subordinate Courts. 11. T. L. R. App., 11.

8.—*Sentence of—Suspension of by prisoner's illness—Execution of the sentence after recovery—Whether right. Revision of sentence—Sections* 291, 294 *and* 295, *Criminal Procedure Code.*

Held that where a sentence of whipping passed under Section 291 of the Criminal Procedure Code is suspended under Section 294, consequent on the prisoner's ill-health, such sentence cannot be carried out afterwards when the prisoner is in a fit condition to stand its infliction. The only course open in such a case is for the Magistrate who passed the sentence, to revise it under Section 295 of the Procedure Code. 11. T. L. R., App. 22.

SERVICE OF SUMMONS. SEE "SUMMONS."

SESSIONS DIVISION.

——*Court of another, committal to—Sessions Judge. Sanction of the High Court.*

Held that the Magistrate could not be invested with power by one Sessions Judge, to commit any case to another Sessions Court. The proper procedure is for the Magistrate to commit to the Sessions Court of the same division, and if that Court sees reason to think that the ends of justice will be better met by having the case tried by another Sessions Court, it should apply to the High Court for sanction in each particular case which will dispose of each application on its merits.

Criminal Circular No. 6 of 1057. 1. T. L. R., 36.

SESSIONS JUDGES AND FIRST CLASS MAGISTRATES.

See "Appeal Statements." 1. T. L. R., 39.

SESSIONS JUDGES AND DISTRICT MAGISTRATES.

1.—*Revision.*

Held that it is the High Court which exercises this power in cases where there is no appeal and that Zillah Judges may also revise, provided, however, that they do not alter any sentence or order, but submit their opinion to the High Court for final order. Criminal Circular No. 7 of 1057. 1. T. L. R., 36.

2.—Ordered with a view to save considerable waste of time that applications for revision under Sec. 295 of the old Cr. P. C. shall be made to the High Court. But Sessions Judges are at full liberty to call for the records of any case from the Sub-Magistrates for examining them with a view to report for orders to the High Court. 1. T. L. R., App. 15.

SESSIONS JUDGMENTS.

——Copies to be forwarded to District Magistrates, &c.

See Criminal Circular No. I of 1061 4. T. L. R., App. 9.

SHANARS—*Inheritance.*

SEE "HINDU LAW—INHERITANCE AND SUCCESSION."

10. T. L. R., 37.

SHERISTADARS OF DIVISIONS.

——Authority to receive appeals, &c., and to authenticate copies of criminal records.

See "Criminal Circulars 8 *and* 9 *of* 1062." 6. T. L. R., App. 13,

SIRKAR.

1.—*Impleading of as defendant, during progress of suit.*

SEE "C. P. C. Ss. 409 AND 53." 8. T. L. R., 122.

2.—*Its right to assume management of public institutions.*

SEE "PUBLIC INSTITUTIONS." 8. T. L. R., 1.

3.—*Summary attachment and sale.*

Held by a majority of the Court that it is not competent to the Sirkar to attach summarily the property of its executive officials in case of their default, when such property has not been tendered in security and no decree, or order directing the attachment, has been passed by a duly constituted Court of Civil Jurisdiction.

By the Chief Justice (dissenting) that such right is sanctioned by usage, that the usage is not unreasonable, but that the procedure to be followed in such cases is not defined, and the matter calls for immediate legislation. *Sirkar* vs. *Subba Aiyan.*

2. T. L. R., 70.

4.—*Adverse possession as against.*

See "Declaratory Decree." 10. T. L. R., 70.

5.—*Jurisdiction of Civil Courts to assess the amount of compensation for land assumed by Sirkar.*

See "Jurisdiction of Civil Courts." 10 T. L. R., 32.

6.—*Power of to award damages departmentally to private party for breach of private contract by public servant.*

See "Contracts—Breach of Contracts." 11. T. L. R, 90.

7.—Reclamation—*Right of Sircar to.*

See "Reclamation." 12. T. L. R., 2.

SIRKAR WASTE LANDS.

1.—*Squatter's title—Sirkar's free right to dispose of.*

Held that the mere fact of one's having planted some trees on a ground admittedly belonging to the Sirkar can give him no title to the land or to the trees, as against the Sirkar or those to whom it gives a valid title by registry.

Held also that waste lands not already granted to, or registered in the name of, any person or to which no person has under any law or rule, having the force of law, acquired any title from the absolute property of the Sirkar; and that it may grant such lands to whomsoever it chooses. *Manian* vs. *Sirkar and another.*

7. T. L. R., 185.

SIRKAR WASTE LANDS.—(*Concluded.*)

2.—*Criminal trespass—no conviction under Penal Code—Sirkar's remedy only under the "Land Conservancy Regulation II of* 1067."

See "Penal Code, Sec. 447." 11. T. L. R., 146.

SMALL CAUSE SUITS.

1.—*Vakil's fees in.*

Fees to Vakils in small causes should be awarded only when the Munsiff has certified that the case is a fit one for the employment of a Vakil. 1. T. L. R., App. 19.

2.—*Fees due to a hereditary village astrologer—whether small cause.*

A claim for perquisites due to a hereditary village astrologer is a claim to immovable property within the meaning of Sec. 10 of Regulation I of 1057 (Civil Courts Regulation), and as such not cognizable as a Small Cause Suit. *Kesavan Potti* vs. *Ramavariar Asari.* 1. T. L. R., 111.

3.—*Suit for maintenance.*

A suit for maintenance by Members of a Malabar Tarawad, not based on any express contract, involves virtually a question of title to immovable property, and as such, is not a Small Cause Suit within the meaning of Sec. 10 of Regulation I of 1057. *Kumaran* vs. *Velayudan.* 2. T. L. R., 31.

4.—*Suit for Michavaram.*

Michavaram is only a rent and a suit for arrears of rent is a Small Cause Suit, provided the money value is within the small cause value. 2. T. L. R., App. 13.

5.—*For rent below* 20 *Rupees.*

Suits for rent below 20 Rs. where no *bona fide* question is involved, should be treated as small cause suits. 2. T. L. R., App. 16.

6.—*Ex-parte decision—appeal.*

There is no appeal against a Munsiffs' Judgment dismissing a Small Cause Suit. When the defendant is *ex-parte* in such cases it is herefore safe to give Judgment for the plaintiff. 3.T.L.R., App. 44.

SPECIAL APPEAL.

1.—*Point of law raised for the first time.*

Questions of law such as limitation and the like, may be taken for the first time in special appeal, when the facts already found by the lower Appellate Court are sufficient to enable the High Court to adjudicate on such a question. But when the point of law

raised for the first time in special appeal amounts to a new plea and involves a remand of the case for a fresh adjudication, such new defence cannot be allowed.

2. *Regarding Costs—Hearing on the merits.*

Plaintiff sued in ejectment and obtained a decree but without costs in the Court of first instance. He appealed to the lower Appellate Court on the question of costs only, and was again successful.

Held that in a Special Appeal from the last decree, it was not competent to defendant to reopen the case upon the merits. *Subramanian* vs. *Padmanaba Mudaliar.* 2. T. L. R., 8.

3.—*From ex-parte decision in appeal.*

A special appeal lies from a decision passed *ex-parte* against a respondent in regular appeal. *Krishna Aiyan* vs. *Paramaswaran.* 2. T. L. R., 29.

4.—*High Courts' power to revise findings on fact.*

Held by a FULL BENCH that the power vested in the High Court by Clause (c) of Sec. 553 of Regulation 2 of 1065 (new C. P. C.) of revising findings of fact in special appeals, cannot be exercised in special appeals preferred against decrees passed by the Zillah Courts before the 1st Chingam 1066, the date on which the said Regulation came into operation. *Thanumalayaperumal* vs. *Annamalai.* 7. T. L. R., 113.

5.—*Value of subject matter being below 50 Rs.*

Held by a majority of the FULL BENCH that no special appeal lies against the decree of the Zillah Court passed on appeal from the Munsiff's decision in a suit wherein the value of the subject matter is below 50 Rupees and the property involved is not real property. 7. T. L. R., 177.

6.—*Reiteration in, of preliminary objection overruled by the lower Apellate Court in remanding the appeal.*

The question having been referred to a FULL BENCH whether a party who did not appeal against a remand order of the Appellate Court passed overruling a preliminary objection, may be allowed, in special appeal against the final decree on merits of the Appellate Court, to raise the same preliminary objections :

Held by a FULL BENCH that the Remand order in the case, being an interlocutory decree, the special appellant's omission to appeal against it would not deprive him of the right to impeach it

SPECIAL APPEAL.—(*Concluded*).

in the special appeal against the appellate decree on merits and to urge the preliminary objection overruled by the interlocutory decree. *Narayana Prabhu* vs. *Damodara Shenoi.*

11. T. L. R., 8.

SPECIFIC RELIEF.

——*Contract of sale—Court's discretionary power to decree specific performance.*

Held that it is discretionary with Courts to decree specific performance of a contract; that in the absence of substantial loss sustained by plaintiff, specific performance cannot be decreed as against a person who purchased for value the property in litigation subsequent to the agreement sued on; and that the mere fact that the purchaser had knowledge of the agreement, is insufficient to hold that he acted fraudulently or dishonestly. *Manakavalaperumal Asari* vs. *Govinda Kymal.* 11. T. L. R., 131.

STAMP REGULATION.

See cases under "Regulations—Regulation I of 1059."

SUIT.—*Value of—Jurisdiction.*

See "Jurisdiction, question of Jurisdiction." 1. T. L. R., 98.

——*Pauper Suits—Admission and disposal of. See "Civil Circular No. 6 of* 1058." 2. T. L. R., App. 7.

——*Plaintiff's right to withdraw.*

See "Civil Procedure Code. Secs. 357, 358 and 470."

5. T. L. R., 122.

——*Maintainability of—Fraudulent alteration of document.*

A executes a debt bond to B. B subsequently sues A for the amount due under the debt bond. But it is found that the amount due under the debt bond was fraudulently altered as to the date of payment while it was in the custody of B, without the consent or knowledge of A.

Held that the suit is not maintainable and that to allow suits of this description would be to hold out premium to fraudulent alteration of solemn documents. *Padmanaban* vs. *Kochukunju.*

6. T. L. R., 111.

——*Consequent on obstruction to execution of decree.*

See "Civil Procedure Code, Sec. 320." 8. T. L. R., 39.

SUIT.—(*Continued.*)

——*Filed in a wrong court pursuant to order of another court—Effect of. Party's liability to pay fresh institution fee for filing the suit in the court having jurisdiction.*

See "Institution fee." 8. T. L. R., 161.

——*Objection to maintainability of suit—Effect of waiver of.*

See "Declaratory Decree—Declaration of title." 9. T. L. R., 17.

——*Relinquishment of part of claim by plaintiff.*

See "C. P. C. Sec. 39." 9. T. L. R., 174.

——*Award of maintenance in suit for partition or recovery of property.*

Held that in suits brought for partition or recovery of property, by persons who fail to prove their right to the relief asked for, the courts may award maintenance out of the property sued for, if the plaintiffs are entitled to maintenance. *Meeral* vs. *Ravuthar.* 9. T. L. R., 174.

——*By claimant to eject purchaser at court-sale. Limitation. Burden of proof as to superior title, as against person in possession.*

A suit by a claimant to immovable property attached in execution of a decree, to eject the purchaser at the court-sale, is not time-barred, if brought within one year of the date of the dismissal of the claim petition.

In suits for ejectment, the defendant, if in possession, is entitled to call upon the plaintiff to prove superior title, as against him (defendant). *Makoji* vs. *Abasali.* 10. T. L. R., 40.

——*For compensation for land assumed by Sirkar—Limitation—Jurisdiction to assess compensation.*

See "Jurisdiction of civil courts." 10. T. L. R., 32.

——*Matrimonial.*

See "Marriage." 10. T. L. R., 95.

——*To declare plaintiff entitled to execute a decree.*

See "Jurisdiction—wrong exercise of jurisdiction."
10. T. L. R., 30.

——*Readmission of suit dismissed for default.*

Held (Kunhiraman Nair, J., dissenting) that where a suit in which issues have been recorded and a date fixed by the court, of its own motion, for production of evidence, is dismissed on plaintiff's defaulting to appear on that date, its restoration to the

SUIT.—(*Concluded.*)

file under Sec. 108 of the old C. P. C. is not irregular. *Narayaner* vs. *Nangeli Anthergenom.* 10. T. L. R., 151.

——*For damages consequent on Judgment-creditor's failure to certify satisfaction of decree made out of court. Cancelment of sale held in execution of the decree.*

See cases under " C. P. C. Secs. 253 and 255."

——*Maintainability of by party in possession to cancel decree.*

See " Declaratory Decree." 11. T. L. R., 94.

——*Maintainability of to cancel excommunication from caste.*

See " Declaratory Decree." 11. T. L. R., 82.

——*Maintainability of, for damages in respect of property subject to execution.*

See " Damages—Torts." 11. T. L. R., 211.

——*Maintainability of, to set aside an order passed in execution making a representative liable to a personal decree.*

See " C. P. C. Secs. 227 and 238." 11. T. L. R., 4.

—— *On executed contract—conversion of into suit on executory contract.*

See " Evidence—Razinamah." 11. T. L. R., 99.

——*On written agreement—conversion of into suit on oral agreement.*

See " Regulations—Regulation I of 1042." 11. T. L. R., 200.

——*For declaration and cancelment of Pattah.*

See " Pattah." 12. T. L. R., 113.

——*Maintainability of, by tenant to compel Jenmi to accept Michavaram.*

See " Jenmi and Kudyan—Rights of Jenmi and Kudyan."
12. T. L. R., 69.

SUITS VALUATION REGULATION.

See " Regulations—Regulation III of 1068."
12. T. L. R., 188.

SUMMARY TRIAL.

——*Disobedience to order of court.*

Where a Magistrate summarily convicted a person for failing to attend before him at a specified time, as he was ordered to do, without quoting the section or law under which he (Magistrate) acted :

SUMMARY TRIAL.—(*Concluded*).

Held that the conviction was illegal, and was not authorized by any law in force. 9. T. L. R., App. 43.

SUMMONS.

1.—*Service—Instructions regarding mode of serving the same.*

See "Civil Circular No. II of 1058." 1. T. L. R., App. 19.

2.—*Service on public servants.*

Ordered that summonses to public servants who are defendants may be served direct on them excepting in the case of officers or soldiers. 1. T. L. R,. App. 8.

3.—*Application for summons for a party to a civil suit as a witness.*

Under the old C. P. C. to obtain a summons for a party to a civil suit as a witness, it is necessary for the party applying for such summons to satisfy the court that there are sufficient grounds in support of such application. *Matuali* vs. *Avutherukuman.*

2. T. L. R., 6.

4.—*Issued under the signature of Samprathies.*

Samprathies are incompetent to sanction prosecution for disobedience to summons issued under their signature.

2. T, L. R., App. 5.

5.—*Disobedience of—Notification of* 1062 *empowering Samprathies to issue summons.*

See "Jurisdiction of Criminal Courts."

8. T. L. R., App. 15.

6.—*Issued by Deputy Thasildar.—Disobedience of.*

See "Penal Code, Sec. 174." 8. T. L. R., App. 22.

7.—*Issued by Puthuval Samprathy.*

See "Penal Code, Sec. 174."

Puthuval Samprathies' office is not a Court of Justice, and the offence does not therefore fall under the latter part of Sec. 174 Penal Code. 8. T. L. R., App. 71.

8.—*Summons for personal appearance—Service—Refusal to appear as witness—Result—Sec.* 156 *of Civil Procedure Code old.*

The requisition to put in personal appearance to a person residing at a distance of more than 50 miles from the place where the Court is held and beyond the limits of the Court's Jurisdiction is not legal. The sending of a summons by post to the address of a witness is not one of the legal modes of service. The provisions

SUMMONS.—(*Concluded.*)

of Section 156 of the old Civil Procedure Code apply only to cases of contumacious refusal by party to appear in obedience to the order of the Court. *Eswaran Numburi* vs. *Narayana Iyen.* 3. T. L. R., 19.

9.—*Disobedience to. Intention—Burden of proof as to.*

In a case of disobedience to summons, all that the prosecution need prove is the service of the summons and the non-appearance of the party. The intention of the party is to be presumed from proof of these two facts. 9. T. L. R., App. 20.

10.—*Refusal to sign—Disobedience to.* *Vide* "Penal Code, Sections 173 and 174." 9. T. L. R., App. 31.

11.—*Revenue Officer's authority to issue. Notification in the Gazette. Disobedience to summons.*

Notification in the *Gazette* is legally necessary to empower a a Revenue Officer of Samprathies' grade to issue process. Disobedience to summons issued by such Revenue Officer, is, in the absence of such notification, not punishable under the Penal Code. 9. T. L. R., App. 19.

SUMMONS CASE.

——*Complaint—Reference to Police by Magistrate.*

See "Criminal Circular No. 5 of 1060". 4. T. L. R., App. 2.

SURETY.

——*Liability of.*

Held that a surety's liability arises only on the creditor exhausting his remedies against the debtor. 7. T. L. R., App. 48.

See also "Security." 4. T. L. R., 30.

See also "Limitation Art. 100." 12. T. L. R., 116.

SYRIAN CHRISTIANS.

1.—*Wills.* A member of the Syrian Christian Community may dispose of his property by will. *Ouseph Kathanar* vs. *Thomma.* 1. T. L. R., 88.

2.—*Marriage.*

See "Sec. 494, Penal Code." 2. T. L. R., 89.

3.—*Liability of Sons for Father's Debts.*

Sons among Syrian Christians are liable to the debts of the father only to the extent of the property inherited by them,

SYRIAN CHRISTIANS.—(*Concluded.*)

whether ancestral or self-acquired. They are not personally liable except on proof of misappropriation of the assets inherited by them. *George* vs. *Unnreri.* 3. T. L. R., 16.

4.—*Escheat.*

See "Escheat." 4. T. L. R., 23.

5.—*Bigamy—Canon and customary laws.—Effect of.*

See "Bigamy." 11. T. L. R., 33.

TEAK-TIMBERS—*Possession of—*

1.—*Whether criminal or not—Burden of proof as to honest acquisition—Non-payment of seigniorage and non-possession of pass.*

Question having arisen as to whether or not, in cases where teak-timber is found in the possession of a private individual, the prosecution is bound to show that an offence has been committed with reference to it, or, in other words, whether the mere fact that the Government has a monopoly over teak, is sufficient to hold the possessor guilty of theft or criminal mis-appropriation under the Penal Code.

Held that the prosecution must prove that the accused got possession of the timber dishonestly.

Held also that, in the absence of evidence that a particular piece of timber found in the possession of an accused belonged to Government, or was removed from the Government depôt, the non-payment of seigniorage or the non-possession of the pass, would simply be a breach of rule not punishable under the Penal Code.

7. T. L. R., App. 63.

2.—*Disposal of—When accused found in possession thereof has been acquitted.*

Held that when accused found in possession of teak-timber and charged therefor has been acquitted, the timber must be restored to him though the Sirkar may have the right of recovering seigniorage thereon. 7. T. L. R., App. 69.

THONDI ARTICLES.

——*Disposal of—Competency of Magistrate to revise orders of his predecessor.*

See "Jurisdiction of Criminal Courts," 12. T. L. R., App. 29.

TITLE.

1.—*Possession—Evidence—Proof of title.*

In cases of disputed title, evidence of possession is often of the greatest importance. It is peculiarly necessary in such cases that the evidence of witnesses produced to prove possession should be carefully tested by the presiding Judge.

A plaintiff, to succeed, must succeed on the strength of his own, not on the weakness of his adversary's title. *Pichamuthu* vs. *Kuttalam.* 1. T. L. R., 5.

2.—*Landlord and tenant.*

The doctrine that a tenant cannot be allowed to deny the landlord's title applies only where the relation of landlord and tenant has been created. *Narayanen* vs. *Narayanen.* 1. T. L. R., 6.

3.—*Of party in possession—Purchase. Bona-fides.*

Where plaintiff purchased property, said to be outstanding on mortgage of which the vendor had not been in possession for 30 years, without enquiry of the party in possession or investigation of his title.

Held that, on the evidence, the mortgage set up by the plaintiff was not proved, and that the whole transaction was *mala fide* and a mere traffic in litigation. *Madahava Perumal* vs. *Thirukuruku Perumal.* 1. T. L. R., 104.

4.—*Supercession of valid title by invalid transaction.*

See "Chitty."

Held that a valid title cannot be destroyed by an invalid transaction. *Marthandan* vs. *Mathavan.* 12. T. L. R., 151.

5.—*Absence of pooof of title. Attachment and sale of property. Trespass.*

A person who has been in adverse possession (for a period of 12 years) is entitled to a decree in his favour as against a trespasser, even without proof of title.

Attachment and sale of property in the possession of a person other than the judgment-debtor, is trespass by the judgment-creditor when the debtor himself has no title to the property. *Chakko* vs. *Ittunnan.* 9. T. L. R., 35.

TOBACCO REGULATION.

See "Regulation—Regulation VIII of 1063." 19 p. 119

TORTS.

See cases under "Damages."—*continuing tort—recurring cause of action.*

A continuing tort gives a fresh cause of action every time an injury is caused by it. *Krishnan* vs. *Ramakrishna Aiyen.*

12. T. L. R., 172.

TRESPASS.

(*a*) Civil.

(*b*) Criminal.

(*a*) Civil.

See cases under "Damages." 5. T. L. R., 24.

——*Absence of proof of title. Attachment and sale of property. Trespass.*

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Attachment and sale of property in the possession of a person other than the judgment-debtor is trespass by the judgment-creditor, when the debtor himself has no title to the property. *Chakko* vs. *Ittunnan.* 7. T. L. R., 35.

[4. T. L. R., 42 *cited and followed*]

(*b*) Criminal.

See cases under "Sec. 447 Penal Code."

TRUST PROPERTY—

Charitable Institution. Inalienability of trust property for trustee's private purposes. Attachment of the property in execution of decree against trustee—Effect of trust property being treated as private property.

Held that an attachment of property forming a charitable endowment, for satisfaction of a private decree-debt of the trustees charged on the property, was invalid.

Held further that the fact that the property has been treated as the trustees' private property, cannot alter its nature and render it alienable for private purposes of the trustees. *Soorammal* vs. *Narasimma Aiyan.* 11. T. L. R., 190

TRUSTEE.

——*Incompetency of, to enter into contractual relations in respect of trust property.*

TRUSTEE.—(*Concluded.*)

Held that an Urallen of a Devaswom being incompetent, as a trustee thereof, to enter into contractual relations with the institution, cannot take a permanent lease of property belonging to it. *Neelacandan Namburi* vs. *Vasudevan Namburi.* 12. T. L. R., 33.

See cases under "C. P. C. Sec. 511."
See also cases under "Devaswom."

UKANTHUDAMAI.

——*Decree obtained by Anandaraven not in management—Family's right to—*

Held that the assets available for Ukanthudama have to be divided equally among the children of a Nanjanad Vellala, whether male or female, and whether by one wife or more, and that where a father leaves self-acquisition of considerable value, that child's share will be larger (*i. e.*, $\frac{1}{7}$) and that where he leaves no self-acquisition or where the acquisition is not worth much, the share will be $\frac{1}{10}$.

Held also that a decree obtained by an Anandaraven not in management of family affairs on a document standing in his own name, cannot be treated as family property. *Vadivu Pilla* vs. *Neelacandan.* 4. T. L. R., 64

UNJEL REGULATION.

——*Offence under. Fabrication of false evidence. Forgery.*

See "Penal Code Secs. 193 and 467." 10. T. L. R., 144.

URALLERS OF DEVASWOM—*Competency to make mortgages and to revive barred debts by acknowledgment.*

Held that of four Urallers of a Devaswom, three alone are incompetent to revive, by acknowledgment, a barred debt on behalf of the Devaswom, inasmuch as they do not, in so doing, act as the agents of the fourth or in the interests of the Devaswom; but that they are competent to raise loans on the security of the Devaswom properties, in the interests of the Devaswom when the fourth is either unable or unwilling to join them. *Narayanen Namburi* vs. *Narayanen Namburi.* 7. T. L. R., 26.

See cases under "Devaswom."

VAKALUT.

——*Fee leviable on, when executed by more than one complainant or accused.*

See "Criminal Circulars 6 *and* 7 *of* 1062." 6. T. L. R., App. 12.

VAKIL.

1.—*Contract of engagement of—Power of revocation.*

See "Contracts—general cases." 2. T. L. R., 65.

2.—*Prohibited from pleading before Judges to whom they are related.*

See "Civil Circular 15 *of* 1061" 4. T. L. R., App. 30.

3.—*Withdrawal of. See "Criminal Circular* 11 *of* 1062."

6. T. L. R., App. 14.

4.—*Making a statement inconsistent with his client's case.*

Held that when a Vakil makes a statement totally inconsistent with his client's case in the pleadings, the courts should not act upon it, unless they are certain that it was made under instructions. *Neelacandan* vs. *Savithri.* 7. T. L. R., 33.

5.—*Duties and Liabilities of.*

See "Jurisdiction—causes of Jurisdiction." 8. T. L. R., 89.

6.—*Debt-bond providing for repayment of the debt by professional services.*

On settlement of certain accounts between B, a licensed pleader and A, a money-lender, a balance of a certain sum was struck in A's favor; whereon B executed a document admitting his liability to pay the amount, but providing that the debt should be discharged by professional services to be rendered by B to A in suits that the latter may institute against his customers, and not otherwise. A sued for the money, and B objected basing his contention on the said document. The Zilla Judge allowed B's objection and dismissed the suit. On appeal by A:

Held that the document relied on by B (defendant) is opposed to public policy, and invalid, so far as the restriction as to the mode of discharge of the debt is concerned; and that, therefore, he is liable to pay the amount due under that document. *Samu Ayan* vs. *Kumaran.* 9. T. L. R., 193.

7.—*Admission by—When binding on party and reliable on by courts.*

An admission made by a Vakil acting within the scope of his authority, and not inconsistent with his party's pleadings will bind the party, and can be acted on by the courts. *Sankaranarayana Aiyan* vs. *Narayanan.* 11. T. L. R., 202.

8.—*Criminal Vakil—Order of fine against, by a District Magistrate in a sum not above Rs.* 50.

The question having been raised whether a Sessions Court is competent to entertain an appeal against an order passed by a

VAKIL.—(*Continued.*)

District Magistrate, imposing a fine as a Criminal Vakil under Sec. 11 of Regulation I of 1043, when the amount of the fine does not exceed Rs. 50.

Held that the procedure in the case is governed by Sec. 16 of Regulation I of 1043, which is among the sections of that Regulation expressly saved by the Cr. P. C., and that therefore the Sessions Court is competent to entertain an appeal even though the amount of the fine does not exceed Rs. 50. 12. T. L. R., App. 19.

VAKIL'S FEE.

1.—*Vakil's Regulation, Sections 24, 27 and 28.* In cases not provided for by the Vakil's Regulation. Held by the majority of the court (Justice Kunhi Ramen Nair dissenting,) that in the absence of an express agreement, the courts ought to award a reasonable amount, taking into consideration the actual service rendered and that the regulation does not apply to such cases. Justice Kunhi Ramen Nair, dissenting holds that in the absence of an express contract, the Vakils are entitled to recover only the amount awarded to their clients on account of the Vakil's fees under the provisions of Section 28 of the Vakil's Regulation. *Padmanaban* vs. *Venkatarama Aiyangar.* 1. T. L. R., 99.

2.—*Small cause suits.* Fees to Vakils in small causes should be awarded only when the Munsiff has certified that the case is a fit one for the employment of a Vakil. 1. T. L. R., App. 21.

3.—*Amount of in cases decided ex-parte on the merits upon hearing plaintiff's evidence.*

See "Civil Circular 10 of 1061." 4. T. L. R., App. 23.

4.—*Assessment of when there are several parties on the same side.*

Held that where parties on the same side retain each a separate pleader, the other party if he loses, may be charged with the full fee of each of the pleaders if the interests of the parties are distinct, but the assessment of the fee should be on the value of the claim put forth by each party when such value is less than the whole value of the suit and not necessarily on the aggregate value of it. *Oolakamma* vs. *Ganapathi Achari.* 6. T. L. R., 37.

5.—*Failure of Vakil to conduct client's case wholly. When partial payment of fee is allowable. Death of one several grantors of a Vakalathnamah—Rescission of the retainer.*

In the absence of a specific contract, a Vakil who voluntarily fails to wholly render the services he was engaged for by a client,

VAKIL'S FEE.—(*Concluded.*)

cannot claim any portion of the fees agreed on. Partial payment of fees is allowed only where the Vakil is not guilty of negligence or misconduct in the conduct of his client's case.

The death of one of several grantors of a Vakalathnamah would not absolve the Vakil from his responsibility to conduct the case wherein he was retained. *Govinda Row* vs. *Ananda Shenoi.* 9. T. L. R., 145.

6.—*Calculation of—Case decided on the pleadings.*

Held that Vakil's fee should be calculated on the amount on which the court fee is levied and not on the market value of the subject-matter of the suit.

And that in a case decided on the pleadings, the Vakil is entitled to full fees. *Sankaranarayna Aiyen* vs. *Govindan Valiachan.* 10. T. L. R., 140.

VALUATION OF SUIT.

1.—*Suit to set aside court sale—court fees regulation sec. 5.*

Held that the value of a suit to set aside a court sale is not the amount of the sale-proceeds but is the market-value of the property sold, calculated according to the mode prescribed by the Court-Fees Regulation Sec. 5, clause A or D as the case may be. *Raman Namburi* vs. *Govindan.* 8. T. L. R., 166.

2.—*For declaration as to Plaintiff's being entitled to execute a decree.*

Institution fee must be paid on the market value of the decree; and, until the contrary is shown, the amount of the decree must be taken as the value thereof. *Vengu Aiyar* vs. *V. R. P. C. Narayanan.* 10. T. L. R., 30.

3.—*Redemption Suit—Removal of building—Court-fee.*

Held that on a suit to redeem a mortgage of a land, where there is no prayer for possession of buildings erected thereon by the mortgagee, the plaintiff should not at the outset be required to pay institution fee on the value of the buildings also. *Narayanan* vs. *Krishnan.* 11. T. L. R., 107.

4.—*Suit for declaration of managership of joint family—Court Fees Regulation, Section 4 clause V, sub-clause (d) Incompetency of a judge to reverse another judge's order as to valuation—Effect of the irregularity on the decree passed.*

Held that in a suit for a declaration of plaintiff's right to hold and manage property which jointly belongs to himself and others,

institution fee should be levied on the market value of the subject matter of the suit, under sub-clause (d) of clause V of S. 4. of the Court Fees Regulation. Such a suit is not analogous to one for removal of Karanaven.

Held also that where a judge has judicially decided the question of valuation of a suit, it is not competent for a successor in the hearing of the case to reopen the question ; but where the question has been reopened and the first order set aside, the irregularity cannot be treated as sufficient to set aside the decree that followed, unless the second order as to valuation is itself wrong. *Kumarasamy* vs. *Veeriaperumal.* 12. T. L. R., 44.

VENDOR AND VENDEE.

1.—*Defective title—Refund of purchase money.*

The purchaser of an immovable property cannot maintain an action for the refund of the purchase money, in the absence of a covenant for the same, in the event of the title proving defective. *Krishnan* vs. *Krishnan.* 1. T. L. R., 1.

2.—*Sale—Dispossession.*

A vendee of immovable property of which he has been dispossessed by a third party cannot sue his vendor for the purchase money in the absence of a covenant for title unless fraud or misrepresentation be brought home to the vendor. Appeal Suit No. 502 of 1056.

3.—*Effect of vendor's conduct after sale on vendee.*

The conduct of a (vendor or Judgment-debtor, (subsequent to the sale, would not affect the vendee for purchaser at Court-sale), *Narayanan* vs. *Paulos.* 9. T. L. R., 195.

4.—*Vendor's lien on property sold, after acceptance of Promissory Note, for consideration.*

Where a vendor who, in lieu of the purchase money due for a sale granted to the vendee, accepted from him a promissory note for the amount, sued for the recovery of that money, and it was found that there was sufficient evidence to shew that the promissory note was accepted as a substitute for the consideration money :

Held that the plaintiff (vendor) had lost his equitable lien on the property sold, and that he was entitled only to a decree against the general assets of the vendee. *Jeganatha Row* vs. *Paulo.* 10. T, L. R., 1.

VENPATTOM-HOLDERS—

—*Royal Proclamation of* 1040. *Public building.*

Held that there is nothing in the Royal Proclamation of 1040 to restrict or qualify the occupancy rights of Venpattom-holders of lands adjoining public buildings or Palaces.

Held also that, by this Proclamation, the Sirkar waived their proprietory rights in favour, and for the benefit, of the ryots in actual possession of Crown lands; and it has not expressly or by necessary implication, excepted from its operation any particular classes of Venpattom lands, on the ground that they may happen to be adjacent to lands already assumed by Government for public purposes. *Mathevan* vs. *Sircar and another.* 7. T. L. R., 89.

VENPATTOM LEASE—

—*Value of improvements.*

The question whether, in a Venpattom lease reserving an annual rent and containing an express stipulation to surrender the lease-hold on demand, the lessee may claim to hold on for 12 years by force of a clause in the agreement which allows him to plant trees and promises to pay compensation for doing so at the time of surrender, has been answered by the majority of a FULL BENCH in the negative. *Govindan.* vs. *Thymukil swamyar.* 7. T. L. R., 44.

VERIFICATION.

1.—*What petitions should be verified.*
See " Civil circular 5 *of* 1061." 4. T. L. R. App., 18.

2.—*Of Vakil's certificate.*
See " Civil circular No. II of 1061. 4. T. L. R. App. 24.

VIRUTHI LANDS.

See cases under " Civil Procedure Code. Sec. 7 and Sec. 7. A."

WALL.

—*Removal of. Conversion of sircar Boundary wall.* See " Penal Code. Sec. 426." 11. T. L. R., 30

WARRANT CASE.

1.—*Dismissal of a warrant and non-compoundable case. Default of appearance of complainant.*

Held that the dismissal of a warrant and non-compoundable case merely for default of appearance of the complainant is not authorized by law. 8. T. L. R., App. 75.

2.—*Magistrate's responsibility to conduct the enquiry in.*

Magistrates should not leave the conduct of warrant cases wholly into the hands of the private complainants. The mere state-

ment, in such cases, of the complainant, that the witnesses cited are unlikely to give evidence in support of the charge, would not exonerate the Magistrate from the duty of proceeding with the enquiry by examining the witnesses cited and others acquainted with the facts of the respective cases. 9. T. L. R., App. 1.

3.—*Discharge of prisoner—award of Compensation.*

Discharge of prisoners in warrant casses, should be made under Sec. 215 of the Criminal Procedure Code, and not under S. 209; and award of compensation to accused in such cases is illegal. 9. T. L. R., App. 40.

4.—*Enquiry by Police. Evidence—Production of, in serious cases.*

In warrant cases, the Magistrates would do well to invoke the aid of the Police in collecting evidence, especially where the complainants are poor men unable to engage the services of lawyers and private detectives. The duty of producing evidence in support of complaints of the commission of serious offences should not be wholly thrown upon the private complainants. *Sirkar* vs. *Bhagyan.* 10. T. L. R., 87,

WASTE.

See cases under "Jenmi and Kudyan—forfeiture of tenancy—waste."

WASTE LANDS. See "Sircar Waste lands."

—*Sales of waste lands—omission to comply with the rules regarding the same.*

Held that ommission to comply strictly with the provision of Regulation II. of 1040 and the rules framed under it, regarding the sale of Government waste lands, vitiates the sale and the private owner affected by the sale is entitled to recover the land sold.

Sirkar vs. *Subramanian.* 1. T. L. R., 11.

WAY.

1.—*Common way and King's Highway:*

Held (by the FULL BENCH on reference made by the Division Bench that first heard the appeal) that the distinction between King's Highway or *Rajaptha* and common way or thorough-fare or *Grama Veethi*, does obtain in this state according to the customary law of the country; that the former is open to all classes of His Highness' subjects without distinction of caste or creed, for all purposes not forbidden by law; and that with regard to the latter, the local custom or usage alone should determine its use. *Oothoopoo* vs. *Joseph.* 5. T. L. R., 93.

WAY.—(*Concluded.*)

2.—*Right of way—Easement.*
See "easement." 8. T. L. R., 114.

WILLS.

1.—*Syrian Christians.*

A member of the Syrian Christian community may dispose of his property by will. *Ouseph Kathanar* vs. *Thomma.* 1. T. L. R., 88.

2—*Interpretation*—A and B are brothers. For the debt of B, certain properties of both A and B are attached and sold. A contends that a portion of such properties, in his self-acquisition and the rest is held by him under a will made by C, A's father, with the consent of D and E, the other sons of C.

Held that this document though styled a will, is in reality, a deed of partition, and being thus of a kind of documents compulsorily registrable, it cannot be accepted in evidence unless registered, for the purpose of proving the conversion of the joint rights into separate ones; and that, hence, the whole arrangement contemplated by the parties of the document become practically ineffectual. *Cherian* vs. *Avoopoker* 6. T. L. R., 17.

3—*Deed of gift. construction—competency of a makkathayam Hindu to execute a will.*

Held by a Majority of the FULL BENCH that, under the Hindu Law, as administered in this state, no makkathayom Hindu is competent to make a valid will. *Ramalingam Pillai* vs. *Balasubramania Pillai.* 6. T. L. R., 146.

4.—*Applicability of English Law. Attestation by legatee—Effect of.*

Where a will is in writing signed by the testator and attested by witnesses, the fact that some of the witnesses are legatees thereunder, cannot, in the absence of positive law of this country, invalidate the testamentary disposition, the English law on the subject not being applicable to natives of Travancore. *Govinda Menon* vs. *Yohannan.* 10. T. L. R., 36.

5.—*Executed by Hindu native of Ceylon—validity of. Effect of migration on law of inheritance.* 6. T. L. R. 146. *Not applicable.*

Held that questions of succession, inheritance and testamentary dispositions of property, are decided by the Courts in Travancore with special reference to the *personal* law of the last owner of the property. That where a Hindu family migrates from one country to another, it carries its own law with it. That a question of the validity of a will executed by a native Hindu of Ceylon

WILLS.—(*Concluded.*)

settled in Travancore, must be decided according to the customary law of Ceylon applicable to that class of people. That the decision in (VI. T. L. R. 146), as to the invalidity of a will executed by a Hindu Native of Travancore, following the Mitakshara Law, is inapplicable to such wills; and that they are valid if they are not at variance with the law as established by Thesawaleme. *Chellappa Pillai* vs. *Itty.* 11. T. L. R., 109.

WITNESSES.

1.—*Deposition of witnesses—Civil and Criminal, written statements, &c. Full description of the parties to be given for the purpose of identification. See "Civil circular No.* 6 *and Criminal circular No.* 8 *of* 1058".

2. T. L. R. App. 9 and 10.

2.—*Testimony of—originally arrested on suspicion.*

It is unsafe to act upon the testimony of witnesses who were originally arrested on suspicion on a charge and confessed to having been accessories after the fact, before their conviction or discharge by the Magistrate or other competent Court, is formally made. *Sirkar* vs. *Valayudan.* 2. T. L. R., 83.

3.—*Examination of.*

The Magistrate is not bound to examine the witnesses named in the original complaint and whose attendance was dispensed with by the Police. 2, T. L. R., App., 17.

4.—*Result of disobedience to summons.*

See cases under "C. P. C. Secs. 171 and 172."

5.—*Attesting—binding effect on, of statements made by executants of documents.*

Held that statements made by executants of documents cannot bind the witnesses who are intended mainly to witness the fact of execution. *Murayas* vs. *Gomez.* 6. T. L. R., 26.

6.—*Default of appearance of party as witness. Service of written notice—adjournment of hearing—verbal order.*

See "C. P. C. S. 172." 7. T. L. R., 14.

7.—*Gosha lady—appearance in Public Court. Examination on Commission.*

See "Cr. P. C. Sec. 70." 12. T. L. R., App. 27.

WRONG COURT.

Where in a suit filed, it is found in the course of the trial that the suit is beyond the jurisdiction of the Court and there is no reason to question the *bonâfides* of the plaintiff, the plaint ought to be returned to the plaintiff to be filed in the proper Court giving him credit for the fee already paid. *Krishnar* vs. *Sakrapani Aiyangar.* 1. T. L. B., 61.

WRONG PARTY.

Where a plaintiff sues a wrong man it is not the business of the Court to bring in the right one. *Krishna Aiyan* vs. *Sankaran*, 1. T. L. R. 78.

WRONGFUL ATTACHMENT.

—by Court—Effect of.

See "Penal Code Sec. 380."

Held, that where an Amin of the Court wrongfully attaches property not belonging to the debtor, he has no right to hold it as against the true owner and the latter's removal thereof does not constitute theft, there being no dishonest intention in so doing. *Sirkar* vs. *Kunhen*. 4. T. L. R., 86.

WRONGFUL CONFINEMENT.

See "Penal Code Secs. 342 and 343 and 347."

WRONGFUL RESTRAINT.

See "Penal Code. Sec. 147 and Sec. 339."

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